108-101

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 188.

R. M. BARTON, JR., ASSIGNEE OF KESSLER & HARMON, PLAINTIFF IN ERROR.

vs.

JOHN GEILER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED FEBRUARY 27, 1880.

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1 Be it remembered, that at a special term of the chancery court of Hamilton County, Tennessee, began and held at the court-house, in the city of Chattanooga, said county and State, on the fourth Monday, it being the 25th day of June, 1877, present and presiding, the Hon. Wm. M. Bradford, chancellor for the 3rd chancery division of said State, when the following among other proceedings were had, to wit:

Style of Suit.

R. M. BARTON, JR., ASSIGNEE, &C., *vs.* JAMES GEILER. } No. . Pros. bond.

Prosecution bond.

2 I hereby acknowledge myself security for costs in the prosecution of this suit if they shall be decreed against complainant, this Aug. 29, 1876.

GEO. T. WHITE.

(Endorsed:) Filed 29th Aug., 1876. J. A. Caldwell, c. & m., by J. T. Hill, d. c. &. m.

Original bill.

R. M. BARTON, JR., ASSIGNEE, &C., *vs.* JAMES GEILER. } Original bill.

To the Hon. Wm. M. Bradford, chancellor, &c., holding the chancery court at Chattanooga, Hamilton County, Tennessee.

R. M. BARTON, JR., A RESIDENT OF HAMILTON County, State of Tennessee, *against* JOHN GEILER, ALSO A RESIDENT OF SAID COUNTY & State.

Complainant, R. M. Barton, jr., respectfully shows unto your honor that on a creditor's petition filed March 17, 1876, in the district
3 court of the United States for the eastern district of Tennessee, Kessler and Harmon, Jacob Kessler and Fred. Harmon, were regularly declared bankrupts by said district court, at Knoxville, the Hon. Conally F. Trigg presiding, on the 8th day of April, 1876, they having made a written admission of the facts charged. That on 28th day of April, 1876, *they having made a written admission of the facts charged. That on 28th April, 1876*, a creditor's meeting was regularly held according to the provisions of the bankrupt act, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

At this meeting complainant was chosen assignee of the estates of the

said Kessler and Harmon, duly appointed and accepted the trust, and is at the present time the assignee in bankruptcy of the said Jacob Kessler and Fred. Harmon; and by virtue of said appointment, and
4 of the assignment made to him on the 2d of May, 1876, according to the provisions of the said act he became and is the sole owner of, as assignee, and entitled to all the estates, interests, rights, choses in action, goods, and property, both real and personal, which the said Jacob Kessler and Fred. Harmon, or either of them, owned at the time of the filing of said petition in bankruptcy, or which they or either of them had previously disposed of, contrary to the provisions of the bankrupt act.

Complainant further shows unto your honor that a short time before the filing of said creditor's petition, viz, on the 10th of Feb'y, 1876, said Kessler, and Harmon, being largely insolvent, and able to keep up no longer, made an assignment, and closed out their entire business; and that a short time previous to this assignment, about three weeks, being on 18th January, 1876, the said Jacob Kessler, as complainant is informed,
5 believes, & charges, made a fraudulent conveyance of an interest he owned in a very valuable house & lot of land, in the city of Chattanooga, to John Geiler, and complainant believes & and charges this conveyance was made with an intent to defraud other creditors, & defeat the provisions of the bankrupt act. The facts in reference to said conveyance are these, as near as complainant has been able to ascertain: Geiler and Kessler both came here to Chattanooga in the spring of 1874. For some years previous to that time—five or six, or more—they had been acquainted with each other, and Kessler had at various times, and in various ways, acted as the agent (as he says) of Geiler. Kessler first came here in Feb'y, 1874, and on 16th March, 1874, acting for himself, and as agent for Geiler, he bought the following described valuable lots, viz:

Lots numbers sixty-three (63), & sixty-one (61) & the north three-fourths of lot fifty-nine (59), all on Chestnut street. He bought these lots
6 from H. S. Spencer & others, or their agent, and agreed to give nine thousand three hundred dollars ($9,300) for them, & a title bond was executed by which Hedges L. Spencer, Mary Weir Spenser, Mary E. Garrett & husband, James W. Garrett, and Charles H. Carter, bound themselves to convey these lots to Jacob Kessler & John Geiler, which bond is registered in book Z, pages 399 & 400. And on the 19th of April, 1874, the above-named parties executed a fee-simple deed by which, for $9,300.00 they "sold & conveyed" unto Jacob Kessler and John Geiler "the aforesaid lots, to have and hold to the said Jacob Kessler and John Geiler, their heirs and assigns, in fee-simple."

This deed was registered April 21st, 1875, in book A, vol. 2, p. . Kessler made the trade, and at this time, and at various other times afterwards, he represented himself, as complainant is informed & charges, as the owner of a one-half interest in said purchase. And complainant is informed that he has a number of times, in the presence of the said
7 John Geiler made these representations, and held himself out to be the owner of a one-half interest in said lots, and he, the said John Geiler, being present, tacitly assented thereto, and made no objection to Kessler's claims. And, indeed, so far as complainant has been able to ascertain, it has by all parties been understood and conceded that Jacob Kessler owned a half interest in these lots from the time of the purchase

until the sale by Kessler of his interest to Geiler, when, for the purpose of defrauding the creditors of Kessler, as complainant believes, they, the said Kessler and , agreed and claimed the said Kessler owned only a fourth interest in the lots which Kessler sought & pretended to convey to Geiler.

Complainant believes that Kessler was really the owner of a half interest, & so charges, but in any event complainant is advised & charges that whether the facts were really so or not, as to the creditors of Kessler, & complainant who represents them, Kessler & Geiler are estopped
8 to deny that Kessler did own a half interest in the lots, they, by their words & acts, having represented such to be the case.

Complaint further shows that since the purchase of said lots there has been erected thereon a valuable brick building at a cost of some $5,000.

In this Geiler claims Gessler has never had any interest, & Kessler now admits it; but complainant charges that such is not the fact, as the proof will show. For according to Kessler's own sworn statements on his examination before the United States commissioner he made the contract in his own & Geiler's names, with Masters, the contractor who built the house. He made out bills and took receipts in the "names of Kessler & Geiler." He worked on the building for "two, three, or four months," for which he received no other pay than his board, and as he says he was not hired to do this by Geiler but did it for his own benefit, and as complainant is informed he held himself out at all times and on
9 all occasions as part or half owner of said building, to which Geiler never objected. Complainant further shows that Geiler claims he had loaned Jacob Kessler $875.00 on May 1st, 1874, and $650 on Aug. 1st, 1875, and that he loaned the firm of Kessler and Harmon $560 Jan'y 2, 1875. On the 18th day of January, 1876, just about three weeks (as before said) before the assignment by Kessler & Harmon, they having become hopelessl yinsolvent & bankrupt, Kessler sought to convey by deed registered in his interest in the above described lots, as they claimed, all that he owned.

The consideration named in the deed, and which they agree was the consideration, for Kessler's interest was the notes executed by Kessler to Geiler, one for $875.00 on May 1st, 1874, and one for $650.00 on Aug. 1, 1875, and ($800) eight hundred dollars in cash. They say Geiler surrendered these notes and paid Gessler $800 in cash. But the trade was made ostensibly in the presence of Thomas Evans, & he saw no
10 money pass. The transaction itself bears the marks of fraud, as will appear on the proof.

Complainant charges that said conveyance was & is fraudulent and void, because Kessler gives Geiler a quit-claim deed to his whole interest to the property, and they only pretend to account for a one-fourth interest in the lots alone, which they claim was all Kessler owned, when, as complainant is informed and believes, Kessler owned a half interest in the lots, and some interest, probably a half interest in the house.

Complainant further states and charges that said conveyance was made in fraud of the provisions of the bankrupt act. It was made when Kessler and Harmon were totally insolvent, or in contemplation of insolvency. It was made within about three weeks of their assignment and within two months before the petition was filed against them. Complainant states

and charges it was made with a view to give a preference to the
11 said John Geiler over the other creditors of Jacob Kessler, and Kessler & Harmon. Complainant charges that the said John Geiler knew that Jacob Kessler was insolvent; at least, he without doubt had reasonable cause to believe he, the said Kessler, and Kessler and Harmon, were insolvent. He lived in the building in which Kessler and Harmon, did business. Kessler boarded with him. They were on the most intimate terms, and Kessler acted as agent for Geiler in nearly all of his transactions. In fact, complainant is inclined to believe, from all the circumstances he can gather, that the interests of Kessler & Geiler are identical, and that in all probability the said Geiler was as much a partner and as much interested in the firm of Kessler and Harmon as Kessler was himself; and that this failure & assignment of Kessler and Harmon was a scheme concocted and worked by and between the said Kessler and
12 Geiler to make money and defraud the creditors of Kessler, & Kessler & Harmon, & perhaps Kessler's partner, Fred. Harmon, and so charges.

In any event complainant charges that the said Geiler is affected with knowledge of their insolvency, as he had reasonable cause to believe that such was the fact, and he knew that said conveyance was made in fraud of the provisions of the bankrupt act, especially of sec's 5128 & 5129 Revised Statutes.

Complainant is advised that he has a right to come into this honorable court & have said conveyance set aside & the interest Kessler owned in the property decreed to him.

Premises considered, complainant prays that the said John Geiler be made a party defendant to this suit, by process returnable to the October rules, and that he be required to answer specifically all the charges of this bill, & discover the facts in reference to the purchase & ownership of said land, & of the conveyance of Kessler's interest to himself. But answer on oath is expressly waived.

13 Complainant asks that said conveyance by Kessler to Geiler be declared fraudulent and void, & that complainant be vested with a half interest or with such interest as to the honorable court it may appear the said Kessler owned in the above-described house and lots at the time of his conveyance to Geiler, and if complainant shall be held entitled to an interest in said property it will be necessary for the purpose of a division that it be sold. Therefore complainant prays that the same be sold for cash, or on such terms as to the court may seem best, and in bar of the equity of redemption, and complainant's share be paid to him, to be by him distributed as required by the provisions of the bankrupt act.

Complainant prays for such other further & different relief as he may be entitled to, &c.

BAXTER & BARTON, *Att'ys.*

STATE OF TENNESSEE,
Hamilton County:

14 Personally appeared before me, R. M. Barton, jr., and made oath that the statements made in the foregoing bill are true to the best of his knowledge, information, and belief.

R. M. BARTON, JR.

Sworn to & subscribed before me this Aug't 29th, 1876.

J. A. CALDWELL, *C. & M.*
By J. T. HILL, *D. C. & M.*

(Endorsed:) Filed 29th Aug., 1876. J. A. Caldwell, C. & M. By J. T. Hill, D. C. & M.

Subpœna to answer.

Spa. to ans.

State of Tennessee to the sheriff of Hamilton County, greeting:

We command you to summon John Geiler, if to be found in your county, to appear before the chancellor holding the chancery court of Hamilton County, at the next October rules of said court, to be held in Chattanooga on the first Monday in October next, then & there to answer the bill of complaint of Kessler & Harmon, a copy of which is herewith issued, & further to do & receive what our said court shall consider in that
15 behalf, and this you shall in no wise omit under the penalty prescribed by law. Herein fail not, & have you then & there this writ.

Witness J. A. Caldwell, clerk & master of said court, at office, in the city of Chattanooga, this 2d Monday in April, 1876, and in the 100th year of American Independence.

J. A. CALDWELL,
Clerk & Master.
By J. T. HILL, *D. C. & M.*

(Endorsed:) Issued 29th Aug., 1876. J. A. Caldwell, C. & M. By J. T. Hill, D. C. & M.

Came to hand Aug. 31st, 1876. Executed by handing John Geiler a copy of bill & summoning him as commanded within.

Sept. the 1st, 1876.

C. B. CHAMPION, *Sh'ff.*

Answer of John Geiler.

Answer of Jno. Geiler.

The answer of John Geiler to the bill of complaint of R. M. Barton, jr., assignee, &c., filed against him in the chancery court at Chattanooga.

This respondent, reserving to himself all right of exception to
16 the said bill of complaint, for answer thereto, says: He admits the assignment of Kessler & Harmon, on the 10th of February, 1876, of their stock of goods, debts, &c., to R. G. Jones for the benefit of their creditors, but respondent requires that said assignment or a copy should be produced on the trial of this cause, as the same may be material to a full understanding of the facts in the cause.

Respondent admits that said Kessler and Horman were declared bankrupts as stated, they admitting the facts that the requisite number & amount

of creditors had petitioned, which is allowable in cases of involuntary bankrupt proceedings. He admits that complainant is the assignee of said bankrupt.

Respondent denies that the conveyance of said Kessler to him, on the 18th day of January, 1876, was fraudulent, or made with an intent to defraud other creditors, and to defeat the provisions of the bankrupt act. In answer to the alleged facts by complainant, respondent states the
17 following as the true and correct facts connected with the purchase of said lots from the Spencers.

Respondent's wife (a wife by a second marriage) had a son living in Chattanooga, viz, Henry Schweirs, who, in the early part of 1874, induced respondent to purchase property in Chattanooga & to remove here to live. Said Kessler was prevailed upon to join in the purchase. For some years before respondent & said Kessler had been co-laborers in Hall's safe shops in Cincinnati. Respondent speaks the German language; can scarcely speak the English. For some time before leaving Cincinnati respondent's wife & Kessler attended to his financial matters. He was growing old (now some 65 years); had been wounded when a soldier; his health enfeebled; his hearing greatly impaired, & at times his mind affected or his memory shattered in consequence of injuries to his spine from
18 the wounds received. His wife and Kessler spoke both the English and German languages.

Kessler first came to Chattanooga in February, 1874, and in behalf of respondent and himself concluded to purchase real estate. He returned to Cincinnati leaving Henry Schweirs & Jo. Forsyth to negotiate a trade with the Spencers. A trade was agreed upon in the names of respondent & Kessler. A title bond was drawn in their absence & notes sent them to Cincinnati for them to sign. Kessler agreed to take such interest in the purchase as he could pay for.

Accordingly on the 21st of March, 1874, a written contract was entered into, in which respondent was to pay $\frac{3}{4}$ & Kessler $\frac{1}{4}$ of the purchase-money & to own the property in like proportions.

It is herewith filed as a part of this answer, marked Exhibit A. The purchase required $8,000 cash, Kessler had $2,000. Respondent loaned him $325 to make $2,325 with which to pay his one-fourth, the
19 whole price being $9,300. Respondent had $200 in Schweirs' hands left by Kessler. He had money in the Western German Bank in Cincinnati, which, with Kessler's $2,325, enabled them to procure a draft from said bank for $4,800. The draft was payable to Kessler's order & by him endorsed to respondent. With this money in March, 1874, respondent came to Chattanooga & made the $5,000 cash payment. Kessler was left in Cincinnati to dispose of respondent's real estate. This he did in April, selling a house & lot for $10,850, of which $5,000 was paid in cash; balance in 1 & 2 years. He soon thereafter came to Chattanooga, accompanied by respondent's family, and bringing with him a check on New York for $5,377.85, respondent's money. The Spencers held two notes for balance of purchase-money. The first respondent paid on 21st April, 1875. He borrowed $1,000 from the Discount & Deposit
20 Bank, pledging a $1,000 U. S. bond loaned him by Cris. Harman, and the balance required, some $1,150, was borrowed of one John Cornhill, a bricklayer, formerly of Cincinnati, lived here at the time, now

living in New York. His deposits in bank will show the amount loaned by him. On the 6th of May following, respondent received from Cincinnati by express $2,067, proceeds from his real estate notes, which enabled him to pay back said borrowed money. The second note was paid by respondent in July, 1875, out of $3,771.35, sent him by express July 8, 1875, from Cincinnati, also proceeds of said real estate notes. Kessler had no interest whatever in said real estate sold. The improvements upon the property purchased have cost some $5,000, wholly paid for by respondent with his own means. It may be that contracts for improvements were made in the name of respondent & Kessler. Respondent never inquired nor did he know how this was. He trusted Kessler, who
21 boarded with him & who attended to respondent's monied transactions, because of his illiterateness & infirmities as already shown. Respondent's money was put in bank in Kessler's name. Kessler never paid anything more than said sum of $2,325. All other payments were with respondent's own means in which said Kessler had no interest. In July, 1875, 27 feet on Chestnut street was sold to Henry Schwiers for $1,200, said Kessler taking a note for $295 for his one-fourth. And in August, 25 feet on Chestnut street was sold to Fred Schwiers, another son of respondent's wife, for $1,000, out of which said Kessler was paid in cash $250 for his one-fourth.

In addition to the $325 borrowed by Kessler to make out his one-fourth payment, as stated, he borrowed soon thereafter from respondent's wife, after he had left Cincinnati, $550, making $875. For this sum Kessler executed his note May 1st, 1874, at one year. On the 1st of August, 1875, Kessler also borrowed of respondent $650, for which he executed his note at one year.

22 At the time Kessler conveyed his one-fourth interest to respondent on the 18th of January, 1876, they had disagreed & respondent wanted a settlement, & himself & wife most earnestly insisted upon it. And although Kessler had made the $295 & $250, out of the sale to the Schwiers, he compelled respondent to pay him for his one-fourth interest the amount he had paid, viz, $2,325. The deed which will be produced on trial, if required, recites the consideration, to wit, $800 cash, and said two notes for $875 & $650. The money was actually paid, & the notes cancelled & returned to Kessler.

In November, 1874, Kessler & Harman commenced business, dealing in groceries, provisions, &c., occupying the business house respondent had built, paying him full rents, $50 per month; Kessler thereby acknowledging the improvement as wholly respondent's. Cris. Harman, an uncle of Fred. Harman, was for awhile a partner. He went out, & the
23 firm of Kessler and Fred. Harman continued till their assignment. These parties had but little experience as merchants or grocers; Kessler had never before had any. During all the time, however, they kept up a good stock, their credit was good, & were careful to protect their paper. There can be no act nor transaction shown indicating an embarrassed or failing condition.

The assignment was made upon a sudden conclusion. Fred. Horman had become dissatisfied, and was determined on a dissolution. Kessler had ordered new goods, some $300 in amount, which were all at the depot, trade had become dull, bad debts had been made, as was found in efforts

to collect. Some paper was falling due. In taking stock it was ascertained there was not as much on hand as they thought they had. So after two days in realizing their condition, their investigation for the first time obscuring the sunlight of prosperity, *that* Horman determined upon an assignment as best for all creditors.

24 Without consulting Kessler he had the assignment written, selecting Jones, a good man, as trustee; urging Kessler at once to sign the deed, & putting Jones at once in possession. In fairness to the creditors, whose goods were at the depot, they were returned, not embraced in the assignment.

The bankrupt act, nor any of its provisions, were not thought of. The assignment, however, shows no preference to any creditor. The $50 to be paid the attorney for writing the deed, &c., was no existing debt, but a part of the trust expenses, & cannot be regarded as a preferred claim to a creditor prohibited by the bankrupt laws.

Yet, upon this assignment, Kessler & Horman were declared bankrupts. is a fraud in law, & in this court of equity respondent's rights cannot be affected thereby.

Respondent cannot say what representations Kessler may have made as to his interest in the lots, but denies that at any time Kessler, in

25 his presence, made representations of one-half interest in the lots, nor did he do any act knowingly, nor has he said anything in this regard that estops him from claiming the true interests he has had & now has. Respondent has been too deaf to hear any conversations or representations Kessler may have made; & if he had, & if made in the English language, he could not have understood them. The law regards him the owner who pays for land, & it is immaterial what others may have understood and conceded among themselves.

Respondent denies that he withheld the facts as to his true interest. He knows of no occasion requiring their disclosure. He denies that he ever had any purpose in any manner of defrauding Kessler's creditors. He denies any fraud in the taking of a quit-claim deed from Kessler. He knew nothing of the forms or manner of conveyances, but trusted the matter to Tom Evans, as a draftsman. As to whether Evans saw

26 any money pass or not does not alter the fact that it did pass. There are others who know the fact. He denies that Kessler & Horman had become hopelessly bankrupt at the time Kessler conveyed to him, or that the conveyance was made in contemplation of insolvency. He denies that it was made with the view to give preference to him over other creditors of Kessler, or Kessler & Horman. He denies that he had reasonable cause to believe that either Kessler & Harman or Kessler were insolvent. It is true respondent lived in the buildings in which Kessler & Harman did business; that Kessler boarded in his family; that they had been on good terms, & that Kessler, as a friend or agent, transacted his business for him; but instead of these facts being evidence of insolvency or in contemplation of bankruptcy, the contrary impression was made upon respondent. Aside from respondent, Kessler had no separate creditor; at least none known to respondent. Kessler & Horman,

27 to all appearances, were doing a good and profitable business; not a circumstance in fact to indicate insolvency. As already stated, they had a good stock of goods all along, credit good, &c., surrounded by

every appearance of prosperity. Nor would respondent have intrusted thousands of dollars in the hands of a bankrupt, as he had done with Kessler, as shown, had he been cognizant of any such fact.

Respondent denies that the interests of Kessler & himself were or are identical, or that he was ever in any manner a partner in the firm of Kessler & Harmon. He denies that the failure & assignment of Kessler & Horman was a scheme concocted and worked by & between said Kessler & himself to make money & defraud any creditors, or to defraud Fred. Horman. The firm was indebted to respondent some *some* $560, & no preference was given him. It was for borrowed money more than a year ago. Relying upon the solvency of the firm he had taken no steps
28 to collect this money; and had he been a party to any such scheme as that charged, had he been shrewd enough to work up such a project, he would have been shrewd enough to have protected this debt, & would not have paid the $800.00 cash, &c.

Respondent, further answering, says that all or any of the facts stated in complainant's bill not consonant with the facts disclosed by him are denied to be true. Respondent is advised that under the bankrupt act the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors, & upon information and belief he avers that he is the only separate creditor of said Kessler, & will be entitled to be first paid in the event said conveyance should be set aside, & that in end complainant will have accomplished nothing.

Respondent applies for a trial of the questions of fact in this cause by a jury, as provided in such cases by statute.

29 Having fully answered, he prays to be discharged & dismissed with his reasonable costs most wrongfully sustained.

NASH H. BURT, *Sol.*

STATE OF TENNESSEE.
Hamilton County:

This day personally appeared before me John Geiler, who makes oath the contents of the foregoing answer have been read over & explained to him, & that the same is true of his own knowledge, except as to the matters stated on information and belief, & as to the matters he verily believes it to be true.

JOHN GEILER.

Sworn to & subscribed before me 27th Sept., 1876.

J. A. CALDWELL, *C. & M.*

(Endorsed:) Filed 27th Sept., 1876. J. A. Caldwell, c. & m., by J. T. Hill, d. c. & m.

Exhibit A to Geiler's answer.

Exhibit A to Jno. Geiler's answer.

CINCINNATI, *March 21st*, 1874.

We, the undersigned, bought on the 16th day of March, in the year of 1874, of Mr. H. S. Spencer & Co., in the city of Chattanooga,
30 a pi'ce land laying in city of Chattanooga, on the corner of Chest-

nut & Pine street, in Chattanooga, for the sum of $9,300.00; 5,000 cash, and the other in one and two years; $2,150.00 in one year; $2,150 in two year', with 8 pr. cent. interest. Three-fourt' of that land shou*ld* belong to Mr. John Geiler & one-fourt' shall belong to Mr. Jacob Kessler. John Geiler shall *b*ay sixty-nine hundred seventy-five dollars ($6,975.00); Jacob Kessler shall *b*ay twenty-three hundred and twenty-five dollar' ($2,325).

(Signed) JOHN GEILER.
JACOB KESSLER.

Deposition of Thomas Evans for compl't.

Depo. of Thos. Evans.

Witness, being duly sworn, deposed as follows:

Int. 1st (by compl't). Are you the Thos. Evans whose deposition was taken before a U. States com'r in the matter of Kessler & Horman about the 13th and 14th of June, 1876?

Ans. I am.

Int. 2d (by compl't). Were the statements then made by you cor-
31 rect & true, & will you refer to it and make it a part of this deposition?

Answer. The statements are correct, and I refer to them and make them part of this answer.

Int. 3d (by compl't). At the time the trade was made by Geiler & Kessler for the Chestnut street property, in Jan'y, 1874, Fred. Horman was absent in Cincinnati, was he not; and, if so, what was your understanding from the parties as to the reason or purpose of his trip to Cincinnati?

Answer. Fred. Horman was absent in Cincinnati, & I understood he had gone there to try & find out the whereabouts of some parties who owed Kessler some money.

Int. 4th (by compl't). Did you know what the financial condition of Kessler & Horman was at the time the conveyance was made?

Answer. I always understood that they were well to do and always met promptly all their debts, & that they had never allowed any of their notes to go to protest. I did not know their condition.

Int. 5th (by compl't). If you ever had any conversation with Kessler as to the purpose of Fred. Harmon's trip to Cincinnati at this time,
32 please state it in full & when it occurred.

Answer. I had no conversation with Kessler about Fred. Horman's trip to Cincinnati prior to making the conveyance. About two or three days subsequent to the conveyance Kessler told me that a note in the bank would fall due in a few days, and that he hoped Fred. Horman would be able to collect sundry moneys that were owing to him in Cincinnati, for which purpose he had sent him there.

Int. 6th (by compl't). Do you still do Kessler's writing & business; and are you a particular friend of his?

Answer. I still continue to do some of Kessler's writing. Kessler and I are now on friendly terms. Prior to the conveyance I knew very little of Kessler, my acquaintance being chief' with F. Horman.

Int. 7th (by compl't). Are you in any way interested in the result of this suit?

Ans. I am not.

Int. 8th (by compl't). Do you know of any property that Kessler has?

Ans. I know of no property he owns.

33 Cross-examination:

Int. 1st (by def't). Did you learn anything from any of the parties about Kessler & Horman's trust deed before it was made?

Ans. The parties become dissatisfied with each other; I had a conversation with each of them separately, & as neither of them seemed disposed to raise money to meet the notes then about to fall due at the bank, I recommended them rather than let the stock on hand be levied on, they had better make an assignment and referred them to an attorney.

Int. 2d (by def't). State the time of the conversations mentioned. How long before the assignment?

Ans. The time was the day prior to the assignment, in the morning.

Int. 3d (by def't). What time, and in what manner was it ascertained that the stock on hand was not sufficient to pay the debts?

Ans. In the evening of the day previous to the assignment. I called at the store & found that Kessler & Horman were at loggerheads.

34 Horman wanted to sell out to Kessler or that they should make an assignment, which Kessler would not agree to, as he said that he had more stock on hand than would pay and cover all debts. I then proposed that they should take stock of the goods on hand and make out a list of debts and find out exactly how they stood.

Int. 4th (by def't). Did they take stock?

Ans. Yes; we at once set to work and took stock.

Int. 5th (by def't). Were you on good terms with both Kessler & F. Horman? And what are now your relations in this regard?

Answer. Horman and I were intimate friends. My acquaintance at that time with Kessler was merely on business matters, for which he paid me; in fact I know very little about him. Kessler and I are now good friends.

Int. 6th (by def't). Where is F. Horman, and how long has he been gone?

Ans. I believe Horman left Chattanooga to go to Cincinnati a few weeks after the assignment. I have heard he was in Cincinnati.

35 Int. 7th (by same). Do you know of Geiler and his wife having money in their house when the conveyance of Kessler to Geiler was made?

Ans. I did not know anything about them, nor to their custom of keeping money in their house at that time.

Int. 8th (by def't). Who managed the business, the money matters, of Geiler at that time and since?

Answer. I knew Kessler acted as their agent and looked after all their affairs at the time. Since the assignment I know he manages all their affairs, receives the rents, & pay' out all monies.

Int. 9th (by def't). State the physical & mental condition of John Geiler since he has been in Chattanooga.

Ans. John Geiler is an old man. He is badly crippled from wounds received in the Army. He receives a pension from the government. His

spine is badly hurt, which seems to have affected his mind & memory. At times he is not rational and his memory entirely gone and forgets everything that may be told him. He is very deaf, and at times it is next to impossible to make him understand what is told him. I have fre-
36 quently failed to make him understand. At times he is very childish. When he gets a little money he spends it on strong drinks and becomes very childish, and at other times quarrelsome. He suffers very much from his wounds. He is now an old man; quite incompetent of taking care of himself or his property. All that he does is looking after a small garden, in which he spends all his time.

Int. 10th (by def't). What language does Geiler speak?

Ans. He is a German & speaks a little English, but his English is such that it is difficult to understand.

Cross and re-examination by compl't:

Int. 1st (by compl't). I now read over to you a copy of your testimony as given in your examination before register heretofore referred to. Is it a correct copy, and are the statements therein made true? The copy is marked Exhibit No. 1, to your deposition?

Ans. Yes; they are correct.

Int. 2d (by compl't). Did you have any other conversation with either Kessler or Horman previous to their assignment about their busi-
37 ness other than the one hereinbefore referred to; and, if so, with which one, & give the substance of the conversation or conversations?

Ans. I had no conversation with Kessler. On F. Horman's return from Cincinnati I found out he was dissatisfied about something. I tried to find out what was up, but failed, other than that he wanted to get out of the store. My impression then was that as his brother Harvey Horman was about to remove from Cincinnati to Chattanooga, he wanted to go into business with him.

Int. 3d (by compl't). How long was it before the assignment that you had this conversation with Fred. Horman?

Ans. About two weeks.

Int. 4th (by compl't). Does not Geiler know enough to be more successful in business than Kessler or Horman?

Ans. Geiler has nothing to do or say about the business. Mrs. Geiler manages the business, and when I have asked Geiler about anything he always refers me to Mrs. Geiler or Kessler.

38 Int. 5th (by compl't). At the time you went with them to write the deed and fix up their business, did Mrs. Geiler do the business for him and give you the instructions what to do, or did Geiler himself do that?

Answer. I did not see Mrs. Geiler at that time. I made Kessler's proposition to Geiler, & he agreed to it.

Int. 6th (by compl't). Did you ever know anybody to get the better of Geiler in any business transactions; if so, what & when was it?

Ans. I never knew that Geiler was intrusted with any business transaction. I know Mrs. Geiler would not trust him except in business pertaining directly with himself.

Int. 7th (by compl't). Between them don't they manage to take pretty good care of their property?

Ans. Mrs. Geiler attends to all business, and Geiler is seldom consulted' although I have heard he does get, at times, stubborn, and will have his own way. The property is well managed by Kessler, as agent for the Geilers.

T. H. EVANS.

2 day' attendance.

Sworn & subscribed before me, 5th March, 1877.

T. M. McCONNELL, *C. & M.*

39 (Indorsed:) Filed April 7th, 1877. T. M. McConnell, c. & m., by J. T. Hill, d. c. & m.

Exhibit No. 1 to Thos. Evans' Depo.

Exhibit No. 1 to Thos. Evans' deposition.

A copy of the evidence of Thos. Evans, as given before Wm. Aiken, register, June 13th, 1876.

THOS. EVANS, being duly sworn and examined, answered as follows:

Ques. Tell all you know about the trade of the lot on Chestnut street, from Jacob Kessler to John Geiler.

Ans. I was accustomed to doing the writing for Kessler & Harman. Kessler called at my office one day in January & told me he wanted me to do some writing for him; that the old man, Geiler, had gotten very mad with him and wanted a settlement. I went up to the store & Kessler took me upstairs to his room. I asked Kessler what was the trouble between them. He told me that he, Kessler, owed Geiler some money on the property and that Geiler was going to have his money in some way,
40 and if not paid he was going to take the matter into chancery. I asked him what he proposed doing. He answered me, if Geiler will give me back my two notes and eight hundred dollars in cash I will make him a quit-claim deed to the property. Geiler, at this point, came into the room. He said I want this matter settled now and I am going to have it. I want nothing but what is fair and right. He was very much excited. I then made the proposition that Kessler had made; that if he would give up the notes with the interest due on them, and $800 in cash that he would make him a quit-claim. He said I will do that, and went and brought in the notes. I took the notes and placed the dates & terms of the notes on the claim deed I was writing and handed back the notes to Geiler. Geiler handed them to Kessler and he tore them up in my presence. The old man said I will go and get the money.
41 Kessler said wait awhile, and we will all go down together and get the deed acknowledged. I then proposed that Geiler should give Kessler a receipt in full, which was done. The old man signed it, and we went down to the clerk's office, and the deed was acknowledged.

By U. S. MARSHALL, att'y for Darby & Co. & other creditors:

Quest. Did you see any money pass from Geiler to Kessler at the time of the trade? Did he not say that they would get it at the bank when they went to acknowledge the deed?

Ans. I saw no money pass; Geiler took up his hat and said he would go and get the money, when Kessler said wait a minute and we will go down together. We have got to go to the court-house and get the deed acknowledged; my opinion being that they were going to call at the bank.

Quest. Where did you write the deed? Who were present? About how long were you at Geiler's house before the terms were agreed upon?

Ans. Upstairs in Geiler's house. We had no conversation
42 till we got upstairs. It was less than five minutes after Geiler came in until the agreement was made, and then I started to writing the deed. I merely told Geiler what Kessler proposed, and as soon as I told it to him, he said he would do it, and it was no longer than it took me to tell it.

Quest. Did you come down to the clerk's office with them?

Ans. I did.

Quest. Was the deed delivered in the clerk's office, & when was that receipt written & delivered?

Ans. The deed was acknowledged in the clerk's office, & given to Geiler then, and I went up with them to the register's office, and Geiler paid the fee for registering it, and left it there for registration.

Quest. Did they stop at any place on their way down for the $800; and were you with them all the time from the time they left Geiler's house until the deed was left for registration?

Ans. No, they did not. We took Chestnut street, down to Fourth, where the office is. I was with them up until the time the deed was left for registration.

43 Quest. Could Geiler have gotten the money any place after you said he took up his hat to go for it until the registration of the deed without your knowing it?

Ans. He was out in the other room in his house before he left, but he did not get it on the way to the court-house.

Quest. Was Kessler in the room with you all the time before you left for the court-house, and did Geiler pay him any money before you all went down street?

Ans. He was in the room with me all the time, and he could not have paid him without me seeing it, and I did not see any paid.

Quest. Did Kessler tell you what he wanted when he came after you to go to the house, or did he appear disposed not to say anything about it until you got into Geiler's house?

Ans. He told me he wanted me to do some writing for him. He said old man Geiler and he had had a falling out about some money that he owed him. He seemed anxious to tell me the whole story. I was
44 busy, and told him I would be up after awhile. Then he went off, and I did go up, and the conversation took place which I have before stated.

(Signed) T. A. EVANS.

Subscribed & sworn to before me on this 13th day of June, 1876.

(Signed) WM. AIKEN,
Register in Bankruptcy.

Deposition of R. M. Barton.

R. M. BARTON, Jr., being duly sworn, deposed as follows:

Int. 1st (by compl't). State whether you are the complainant in this suit, the assignee of Kessler and Horman, and all you may know pertinent to the issues in this cause.

Ans. I am the complainant in this cause and the assignee of Kessler & Horman. After my appointment as assignee I learned through information derived from Tom Evans that there was in all probability fraud in the transaction by which Kessler conveyed the Chestnut street property to Geiler, and that the sale was made under suspicious and peculiar circumstances. I thereupon had an examination of the bankrupts and other witnesses to investigate this and other matters as provided by the bankrupt act. The examination was set for the 13th of June, 1876, at the office of Baxter and Barton. The register in bankruptcy from Knoxville, Wm. Aiken, was present to conduct and hear the examination. Myself, as assignee, and several att'ys for creditors, chiefly Maj. Marshall, examined the witnesses. We examined John Geiler, the defendant in this cause; Tom Evans, whose deposition has been taken; Jacob Kessler, whose deposition is also taken; Chris. & Henry Horman. Part of the depositions were taken, finished, and sworn to before the register on the 13th, & others of them were continued over and finished before U. S. commissioners. I herewith file & make a part of this deposition a true copy of the statements made by John Geiler at that time. The copy was made by myself from his original written testimony in my
46 presence, & I know both by recollection & from his written evidence that the statements herein set forth are the statements then made by him. I was told by Tom Evans, I think it was, that I would have to have an interpreter for old man Geiler. I procured one, who was sworn to correctly and truthfully interpret Geiler's testimony. He did interpret it, and it was written, read it over to Geiler, who subscribed & swore to it. I asked Geiler some questions, & Maj. Marshall asked him some. Some of our questions were answered directly by Geiler before the interpreter could repeat them to him, he understanding them & answering them in plain English. Others were repeated to him in German by the interpreter & answered by him in German. It seemed to me that such as he wished to answer he readily understood & answered in English, & those that he did not care to answer had to be interpreted, though as simple as the former. In this, however, I may be mistaken, & do the old
47 man injustice. Lewis Shepherd, esq., was there as an att'y to represent & take care of Geiler's interest. He asked Geiler a No. of questions, all of which, as I remember, were answered very readily by Geiler.

When we came to examine Tom Evans, whose deposition is taken, as hereinbefore stated, we did not find him so free with his information as he had heretofore been, & he at that time manifested considerable interest in the matter on behalf of Geiler, & at that time, & since, he & Kessler have appeared to have had the active control & supervision of Geiler's case; I mean outside of their attorney, of course; that is, Evans & Kessler have all the while acted as if they were the clients, & their interests were involved & not Geiler's. Evans disclaims all interest or prejudice

for his one-fourth interest. Kessler sold me his interest a month before the was made. I paid him the $800 at the time the deed was made in greenbacks. I paid it to him in my own house. Do not remember that any one was present. Some of my own folks may have been there. The money I borrowed was borrowed in bonds from Christian Horman. This was borrowed to raise money to pay Spencer & Co. with. Spencer had the deed written & brought it to me. I gave the deed in the
54 register's office to Kessler. Several present. Do not remember whether any one was present when we made the trade. We were several days making the trade. Kessler owed me at the time we made the trade, and had borrowed $875.00 from me on May 1st, 1874, and $650 on August 1st, 1875, which were in notes. These were surrendered at the time of the trade, and were a part of the consideration for Kessler's interest.

Quest. You have filed a claim against Kessler & Horman in this case, part of it being on the note executed by Kessler & Horman to you on the 2nd of Jan'y, 1875, for $560; for what was this note given?

Ans. It was for borrowed money.

Quest. Were you familiar with the affairs of Kessler and Horman at the time you made this loan?

Ans. I never knew anything of their condition.

By U. S. MARSHALL, att'y for Dailey & Co. and other creditors:

Quest. Where did you keep the $800 in greenbacks which you gave Kessler?

55 Ans. Kessler acted as my agent and would deposit my money in the bank, & when I wanted it he would draw it out for me.

Quest. Did Kessler get this $800 out of the bank for you?

Ans. I had it myself. I got it from Ohio, from Cincinnati, & had it two or three days in the house.

Quest. From whom did you get it in Cincinnati?

Ans. I got it from the house that Kessler sold for me in Cincinnati; the house was sold at auction. I do not know who purchased it. It was sold in March or April, 1874.

Quest. Did you draw on the man who purchased the house, or did Kessler draw on him for it? Explain all about how that was.

Ans. The money came by express.

Quest. Was the money expressed to you or Kessler?

Ans. It was expressed to me.

Quest. Did you receipt for it to the express company?

Ans. I receipted for it.

Quest. When was it that you receipted for it?

Ans. It was in 1875. I took $800 from what I got up there.

Quest. You say you had the $800 in your house for two or three
56 days before you paid it to Kessler, where was it the rest of the time after it came from Cincinnati?

Ans. Kessler took it to the bank. I don't know whether it was to the First National or the City National Bank.

Quest. Did Kessler draw it out of the bank for you two or three days before you paid it to him, or how did you get it?

Ans. No; I had it myself.

Quest. Why did you say then that you had it for two or three days in the house before it was paid over?

Ans. It came from Cincinnati a few days before I paid it to Kessler & I did not put it in bank, because I had made the purchase from Kessler.

Quest. Did it come to you & did you receipt for it?

Ans. That money came through the post-office in my name.

Quest. Was it in bills or a check? From whom did it come? State all about it?

Ans. It was a draft.

Quest. Where did you get that draft cashed?

Ans. In the 1st National Bank, I think.

57 Quest. Did you get it cashed, or did some one else get it done?

Ans. I did it myself.

Quest. By whom was the draft drawn? What was the am't of it? On what bank was it drawn? State all about?

Ans. It was drawn by Henry Kaisie. I don't remember the amount, but think it was about nine hundred dollars. It was payable to me. I don't know on what bank it was drawn. It was Jacob Kessler that was my agent to sell the lot after I came to Chattanooga.

Quest. Was it the 1st National Bank or the Discount and Deposit Bank that cashed that draft?

Ans. I am pretty certain it was the 1st National Bank of Chattanooga.

Quest. Has not Jacob Kessler lived with you since you came to Chattanooga or boarded with you, and was he not boarding with you at the time of this sale made by him to you of his interests in the lots on Chestnut street?

Ans. He has boarded and lodged with me since he came to Chattanooga, & is doing so yet.

58 Quest. Did you get that draft cashed the same day you paid the $800 to Kessler?

Ans. I had got it cashed three or four days before that time.

Quest. How much did that house in Cincinnati sell for?

Ans. Nearly eleven thousand dollars, not quite.

Quest. Did not Jacob Kessler have an interest in that house?

Ans. No.

Quest. Did Kessler borrow that money from you before he went into business with Horman, or after it?

Ans. He borrowed it before he went into business with Horman, before I ever saw Horman in the State.

Quest. How much rent did Kessler & Horman pay to you for that building in which they did business?

Ans. Fifty dollars per month.

Quest. How much interest did those notes of Kessler to you draw?

Ans. Eight per cent.

Quest. Was any of the interest on those notes ever paid before the notes were canceled at the time of the sale from Kessler to you?

Ans. Yes.

Quest. How much was paid and when was it paid?

59 Ans. He paid it when it became due. Can't tell without figuring how much it was. *Quest.* Each was due a year from date.

Quest. How did you come to purchase the interest of Kessler in those lots?

Ans. Because I wanted my money in order to build.

Quest. How much money did you get by making the trade?

Ans. That is how the proposition come to be made for him to sell his interest in the property.

Quest. Did not Kessler put the money he borrowed of you into the building put on the lot?

Ans. No, he commenced his store with it.

Quest. Did he get the money from you at the time those notes bear date?

Ans. Yes, the notes were given at the same time the money was loaned.

Ques. Did you give him, Kessler, greenbacks, or did you give him a check on the bank?

Ans. I don't remember whether I gave him greenbacks or a check.

Quest. Did you purchase any groceries or other articles from Kessler & Harman while they did business together?

Ans. I never did; perhaps my wife did, what she needed.

60 Questions by LEWIS SHEPHERD for Geiler:

Quest. Had you any knowledge or informatin that Kessler & Horman were insolvent, or in failing circumstances when you made the trade with Kessler for his part of the lot?

Ans. I never knew anything about their business.

2d. quest. State whether or not you made the trade with Kessler in good faith? Was it or not your purpose to defraud any of the creditors of Kessler & Horman, or was the trade intended to operate as a fraud upon the provisions of the bankrupt act?

Ans. I made the trade in good faith. I did not intend to defraud any of the creditors of Kessler and Horman. Would not have made the trade if I had known they were in failing circumstances.

Quest. 3d. What money was it that was sent to you through the post-office?

Ans. Eight hundred dollars of it was paid to Mr. Kessler on the purchase.

Quest. The note of $875 mentioned in the conveyance of Kessler to you bears date of May 1st, 1874. State if you loaned him that money at that time, where it occurred?

61 Ans. I gave it to him in my house at the time the note bears date.

By W. S. MARSHALL, att'y for creditors:

Quest. When was the money paid over that you loaned on the second note for $650.00?

Ans. It was in my house.

Quest. When was the trade made with Kessler for his interest in those lots?

Ans. I can't tell, for I was two or three days making it.

Quest. Where was Fred. Horman when that trade was made?

Ans. He was in the store in Chattanooga, I think.

Quest. Was Fred. Horman present at any time during the trade?

Ans. He never was present when we spoke of the trade, at all.

Quest. Was Fred. Horman present, or where was he when the deed was made?

Ans. No. I don't know where he was.

Quest. Did you tell Fred. Horman about the trade as soon as it was made.

Ans. No, I never spoke to him.

Quest. What became of those two notes of Kessler to you?

62 Ans. I gave him the two notes and the $800 and took the deed.

Quest. Where was it that you gave Kessler the $800 and notes & took the deed?

Ans. At my house. I never paid anything except a very little, except at my house?

Quest. When you loaned that money to Kessler did you have the money in the house to pay him, or did you get it in the bank?

Ans. I think I had it at the house.

Quest. In what bank did you keep your money?

Ans. At the First National Bank of Chattanooga. I always left that with Kessler. Whenever I wanted money I would just tell Kessler and he would get it for me. He attended to all of my business, collected rents, &c.

(Signed) JOHN GEILER (in German).

Subscribed and sworn to this 13th day of June, 1876.

WM. AIKEN,
Register in Bankruptcy.

Depo. of Jacob Kessler.

JACOB KESSLER, being duly sworn, deposed as follows:

1st quest. (by compl't). Are you the Jacob Kessler, of Kessler
63 & Horman, and was your deposition taken before a U. S. com'r the 13th & on 14th of June, 1876?

Ans. Yes, sir; & my deposition was then taken.

Int. 2d (by compl't). Was your testimony as then given true and correct?

Ans. Yes, sir.

Int. 3d (by compl't). Is the annexed copy, marked Exhibit A, a correct copy of your testimony as then given, & will you make it a part of this deposition?

Ans. Yes; it has been read over to me. It is a correct copy, and I make it a part of this deposition and answer.

Int. 4th (by compl't). Where do you now live?

Ans. I live with John Geiler, in Chattanooga.

Int. 5th (by compl't). Have you been living with him all the time since you came to Chattanooga?

Ans. Yes, sir.

Int. 6th (by compl't). Do you still manage & control his business for him?

Ans. Yes, sir.

Int. 7th (by compl't). How long before your conveyance of the Chestnut street property to Geiler was it that Fred. Horman went to Cincinnati?

64 Ans. I don't know exactly. About three or four days, to the best of my recollection; that is, Fred. Horman had been gone about that long when the conveyance was made, I think.

The further taking of this deposition is continued by consent till Thursday morning, April 5th, 1877.

Int. 8th (by compl't). What relations are Chris. and Henry Horman to Mrs. Geiler?

Ans. Chris. Horman is a brother of Mrs. Geiler. Fred. Horman is her cousin.

Int. 9th (by compl't). Are you in any way related to any of them?

Ans. I am not.

Cross-examined:

Int. 1st (by def't). When did you first discover that you had not sufficient goods & good debts to pay your creditors, and how did you discover it?

Ans. On the evening before we made the assignment. Discovered it by taking an inventory of the goods.

Int. 2d (by def't). Had Fred. Horman & yourself ever been in the grocery business before you came to Chattanooga?

Ans. No.

65 Int. 3d (by def't). What had heretofore been your respective occupations?

Ans. I was a mechanic, working in the fire-proof safe business at Cincinnati. F. Horman had a retail cigar store in Cincinnati.

Int. 4th (by def't). State all about the trade made with the Spencers for the Chestnut street lot, and whose money paid for it, and how you happened to become interested in the trade.

Ans. In 1874 Henry Schwiers, a son of Mrs. Geiler by a former marriage, came from Chattanooga to Cincinnati & persuaded Geiler to sell his property up there & buy a piece of land down here. And also at the same time he persuaded Cris. Horman to buy with them, & also myself. He left Cincinnati, and by coming down here he wrote some letters to Geiler, & told him to let me come down here & see the place. So I did come on account of Mrs. Geiler and Cris. Horman and Henry Horman & myself. We each four agreed to take one-fourth part each if it was the way as he represented it. I came down some time in February,

66 1874, and examined the place, when Henry Schwiers then told me, and showed me that the land would be worth twice as much in less than 18 months. I never had any real estate before, and thought it would be a good speculation to buy one-fourth of it, as we had all agreed to do in Cincinnati. Before buying I went back to Cincinnati and told them all about the property & condition it was in, & Henry Schwiers said it would increase in value. And Mr. Geiler came to the conclusion to sell out in Cincinnati and come down here, and so did Cris. Horman. Shortly afterwards the property in Chattanooga was bought, and Cris. Horman & Henry Horman backed out on account of not seeing it. So it came that Mr. Geiler had to sell his house in Cincinnati right away and take three-fourths of the property and one-fourth was left to me. I would have taken it all if I had the money. The property cost $9,300, $5,000 to be cash and the balance in 2 notes. $5,000 was paid some

67 time in March or April, 1874. The first note was paid when it was due; the 2d note was paid before it was due on a discount.

Quest. 5th (by def't). State in what manner the money was obtained by Geiler to make the payments?

Ans. Mrs. Geiler had from $2,500 to $2,800 in money in her name before her marriage, or maiden name, Dora Horman, in F. Adea's bank in Cincinnati, which she took & put in the First German Loan Association. From there it was, together with the money I had in the same place, given to me for making out a check, & making the first payment. I had about $2,000 in cash at the same place. Mr. Geiler came down & paid the money or check over to Spencer's agent. Geiler left me in Cincinnati with his family to sell his real estate, or a house which was 505 Race street. I sold it through an auctioneer, Haffner & Barman, at public outcry for $10,850; $5,000 was paid in cash, & the balance in 1, 2, & 3 notes. I brought the $5,000 down in a check, and that was used
68 in building upon the property. When the notes fell due the money was sent down by express.

Int. 6th (by def't). Did Geiler & yourself go into any writings as to the purchase of the lot; if so, where is it?

Ans. We went into writings. The writing is filed as Exhibit A to Geiler's answer in this cause, to which I refer as a part of my deposition.

Int. 7th (by def't). How much money did you pay?

Ans. I paid $2,325, & this was all I paid. All the money paid, except the $5,000 paid by Geiler, I paid, paying with Geiler's money. The $2,325 of my own money was a part of the first or $5,000 payment.

Int. 8th (by def't). How long had you known Geiler before leaving Cincinnati?

Ans. About six years. I boarded with him about five years. We worked together in the safe shops.

Int. 9th (by def't). Did you advance or put in any money in making any improvements?

Ans. I did not.

Int. 10th (by def't). Had you any idea or thought of making any assignment at the time you conveyed to Geiler?

Ans. Never had the slightest idea of it.

69 Int. 11th (by def't). Had you any such idea when you conveyed your half interest in the partnership lot to Henry Horman?

Ans. I did not.

Int. 12th (by def't). Was all your property put in the assignment?

Ans. Yes; there was some goods lying in the depot that had arrived and had not been delivered. When we found out how we stood and could not pay for them we would not receive them *them*, & sent them back; all other property was given up.

Int. 13th (by def't). Did you or Horman contemplate any bankruptcy at any time?

Ans. We did not. When the assignment was made we expected the property to pay as much as it would, & we expected to have the balance to pay.

Int. 14th (by def't). Were you in a good condition when you conveyed to Geiler?

Ans. We were; thought we were doing a good business.

The further taking of this deposition is continued by consent till tomorrow at 10 o'clock, this April 5th, 1877.

The taking of Kessler's deposition resumed in presence of compl't & def't's solicitor, N. H. Burt, at 10 o'clock, April 6th, 1877.

70 Int. 15th (by def't). How long after the assignment before the surrender of the property conveyed to the trustee, Jones?

Ans. The same day—soon afterwards.

Int. 16th (by def't). Did you or F. Harman go into any business afterwards?

Ans. We did not.

Int. 17th (by def't). Now tell any fact or circumstance connected with your conveyance to Geiler for your ¼ interest in the Chestnut street property, what brought it about, or, in fact, anything that may show the reason or inducement of the conveyance.

Ans. Well, I owed Geiler about $1,500. I didn't have the money to pay him. He wanted me to pay him, and so I thought the best way was to sell him my fourth to get out of debt, and by doing so I made $500 and some dollars, getting my money back what I had paid and the Schwier's lots besides.

Int. 18th (by def't). Was Geiler pressing you at the time?

Ans. He was.

Int. 19th (by def't). Was his wife in any manner interfering?

Ans. She joined in with him & wanted me to pay.

71 Int. 20th (by def't). Was said conveyance made of a sudden, or had it been contemplated?

Ans. It had been contemplated a short time.

Int. 21st (by def't). What sort of a man is Geiler in such transactions?

Ans. He is stubborn.

Int. 22d (by def't). At the time of the conveyance were you on good terms with Geiler & his wife?

Ans. I was. The only difficulty was about my paying the money.

Cross-examination by complainant:

Int. 1st (by compl't). Are you not and have you not been on very friendly and confidential terms with Mrs. Geiler, especially in reference to business matters?

Ans. I have been on friendly terms all the time, except that at that time she wanted me to pay.

Int. 2d (by compl't). Had you not, prior to the time of that conveyance, always conferred with Mrs. Geiler about Geiler's business, and fully revealed to her all matters within your knowledge that would in any way affect Geiler's business?

Ans. Yes, I did; I all the time talked to her about his business, and told her all matters within my knowledge affecting his business,

72 except, of course, I looked out for myself. I don't mean I took any advantage of him. I attended to my best ability to everything of his.

Int. 3rd (by compl't). Where was Fred. Horman when you sold to Geiler?

Answer. At Cincinnati.

Int. 4th (by compl't). How did Fred. Horman come to go to Cincinnati?

Ans. He went to Cincinnati to buy some goods and to collect some money for me.

Int. 5th (by compl't). Why did you send him to collect money for you at that time?

Ans. I did not send him to; he went there, & I thought it just as well that he collect some money for me.

Int. 6th (by compl't). From whom did you direct him to collect money for you?

Ans. From Clechner & Schwier; that is all.

Int. 7th (by compl't). What was the amount due you from each?

Ans. From one, $18.00, and from the other, $12.00, about.

Int. 8th (by compl't). Were you not instrumental in getting him to go to Cincinnati at that time?

Ans. I was not.

Int. 9th (by compl't). Did he buy any goods when in Cincinnati
73 at that time? If so, to what extent?

Ans. I think he did. I can't say to what extent. I am not sure about that.

Int. 10th (by compl't). What caused you to take an inventory or account of stock first before you made the assignment?

Ans. We knew the day before we had some notes to pay, and we did not know whether we could pay or not, and that was the reason we took account of stock, to see if we could pay. We did it more on the advice of Col. Burt, att'y, who suggested that mainly to see how they did stand.

Int. 11th (by compl't). Were those the first notes that you found you could not pay?

Ans. Yes.

Int. 12th (by compl't). Had you not before that found that you could not pay your individual notes?

Ans. I never did think I could not pay them.

Int. 13th (by compl't). Did you have any individual debts outstanding at the time of the assignment?

Ans. I did. I owed Vinson Kaun about six or seven dollars, to New Orleans store about three or four dollars, & several more small bills about town.

74 Int. 14th (by compl't). Have you since paid these debts?

Ans. I have paid some; one debt to N. O. store.

Int. 15th (by compl't). What have you been doing since the assignment?

Ans. Working for Geiler.

Int. 16th (by compl't). State what you are working at, what pay you get, whether or not you have been paid, and all about it?

Ans. I was driving wagon for about 4 or 5 months. Since that I have been tending a small store in Geiler's building. I get two or three dollars a week besides my board. He has paid me; pays me whenever I call for money.

Int. 17th (by compl't). Do you still deposit Geiler's money in your name?

Ans. I deposit no money at all, either for me or Geiler. I collect all money for him and pay out all money for him. I am still acting for him.

Int. 18th (by compl't). About what amount of stock does he have in his store?

Ans. About $150.00 to $175.00.

75 Int. 19th (by compl't). Who employed the workmen and gave directions for the building of the brick building on that lot?

Ans. I and Geiler together.

Int. 20th (by compl't). Who did you employ besides Masters?

Ans. Miles Smith, a negro, & some other negroes. I don't know them.

Int. 21st (by compl't). Did you pay them in money or out of the store?

Ans. I paid them in money; did not have any store. Masters had a contract for the whole thing. Masters is paid, as far as I know. I paid him. I paid all the money, with Geiler's money.

Int. 22d (by compl't). How much money did you bring here from Cincinnati?

Ans. I don't know exactly; a couple hundred dollars.

Int. 23d (by compl't). Where did you get the rest of that $2,300 you paid on the property?

Ans. That was paid long before that time.

Int. 24th (by compl't). What were those notes that you gave Geiler for?

Ans. For borrowed money.

Int. 25th (by compl't). When was the money borrowed?

76 Ans. At different times; sometimes in 1874 and others in 1875; one note was May 1st, 1874, I think, and the other in July, 1875, I think; am not very sure.

Int. 26th (by compl't). Did you get the money at the dates you gave the notes?

Ans. I don't know exactly; I explained he matter once before.

Int. 27th (by compl't). Did you get any money at the time you gave the note in 1874; and, if so, how much?

Ans. Yes; I did; but I don't know exactly how much. I am not sure whether I got the money at the time or not.

Int. 28th (by compl't). Had you given him any notes before that, in May, 1874?

Ans. I did not.

Int. 1st (by def't). Has Geiler been in a condition to manage his affairs without assistance from some one?

Ans. I do not think he was.

Int. 2d (by def't). Can he give his deposition without an interpreter?

Ans. I do not think he can.

Int. 3d (by def't). Is he capable now, mentally, to testify?

Ans. I don't think he is.

77 Int. 1st (by compl't). Did you ever know him to forget any money that was due to him?

Ans. I don't know. He may have done so.

Int. 2d. (by compl't). Would you, then, deem a sworn answer of his very reliable?

Ans. I think if it was very well explained to him, and long enough explained, it would be.

And further saith not.

JACOB KESSLER.

Sworn & subscribed before me April 6, 1877.

T. M. McCONNELL, *C. & M.*

(Endorsed:) Filed April 7, 1877. T. M. Connell, c. & m., by J. T. Hill, d. c. & m.

Exhibit A to Jacob Kessler's deposition.

Exhibit A to Jacob Kessler's deposition.

A copy of the evidence of Jacob Kessler, as given before U. S. com'r, on 14th day of June, 1876, in matter of Kessler & Horman, bankrupts.

JACOB KESSLER, being duly and examined, answered as follows:

Int. 1st. When did you & Fred. Horman first form a partnership in this place?

Ans. Some time in November, 1874.

Quest. What were the terms of the partnership?

78 Ans. We were equal partners. We each put in about $800.00. I bought about $800 worth of goods before Horman came down. This was some time in November, 1874. Horman put in some goods and money at various times. He put in as much as I did. Christ. Horman bought these $800.00 worth of goods for me in Cincinnati. Christ. Horman paid for these goods. I gave Horman my own individual note at the time for the amount. I have paid Horman that note. I paid the note on 20th Jan'y, 1876. Part of the money I paid on the note I got from Mr. Geiler, which he gave me for my interest in the land. The remainder of the note to Horman I paid by a note on Henry Schwier's for some $295.00. I used the money I received from Geiler in a few days after I received it to pay the note to Christ. Horman. We afterwards put various am'ts into the firm as capital. Cannot remember the exact amounts.

Int. When did you sell your interest in the lot on Chestnut street to John Geiler?

79 Ans. The deed will show; some time in January, I think.

Int. What were the terms between you and Geiler?

Ans. I owned a one-fourth interest in the property. I had no interest in the house. It was only a one-fourth interest in the land. I sold this to him. He gave me $800.00 in cash and two notes I had given to him. The whole am't was some $2,325.00. The trade was made on the day the deed was written and bears date. The reason I made the trade was because I couldn't pay the notes. The $800 he paid me in cash, in greenbacks. He paid me this sum in his house on Chestnut street, Chattanooga. His wife & family were present at the time. Tom Evans wrote the deed. He was present when the trade between Geiler and myself was made. I transferred the deed to Geiler at that time. The first of the notes above named was given by me to John Geiler in Cincinnati. It was for money I borrowed of him. I used it partly to pay for my one-fourth interest in the

80 land. The second note was for money borrowed, which I used in my business. At the time I went into business I only had the money I had borrowed from Geiler. I have lived with Geiler ever since I have been here. Geiler did not know the condition of our business at the time I sold him my interest in the land. I considered myself good at that time.

Quest. State about the amount of your present indebtedness?

Ans. Something near $4,000.00, I suppose.

Quest. What was the cause of your failure?

Ans. We had some notes which we were not able to me', and which went to protest.

Quest. What became of the capital you both put in, and how do you account for your losses, including your present indebtedness?

Ans. I can't account for it at all.

Quest. Have you nothing to show where all this money has gone?

Ans. No; I have not.

Quest. At the time you formed the partnership between you and Horman, you have said you put in $800.00 worth in goods; how and
81 when did you use the money you had gotten from Geiler?

Ans. I used it in my business some time in 1875; I think I put it in at different times.

By W. S. MARSHALL, for Daily and Co., and other creditors:

Quest. Was the firm of Kessler & Horman indebted to Geiler at the time Christ. Horman withdrew from the firm; and, if so, how much and what was it for?

Ans. They were indebted to him about $560 for borrowed money.

Quest. When did they borrow that money and what did they use it for?

Ans. On the 2d of Jan'y, 1875; used it in buying goods.

Quest. Has any part of that note been paid; when was it due? State all about it.

Ans. No part has been paid. It was due one year after date.

Quest. Did you name that debt in the list of your debts at the time you made the assignment to Jones?

Ans. We did.

82 Quest. How much were you indebted to Henry Horman at the time of the assignment?

Ans. About two hundred dollars.

Quest. Did you name the debt to Henry Horman in your list of debts given in the assignment?

Ans. We did.

Quest. Is the am't named in the article of assignment the true amount due Henry Horman?

Ans. It is.

Quest. Was the am't named in the article of assignment as due to John Geiler the true amount due him?

Ans. It was; we made the list out as correct as we could.

Quest. Did you, that is, Kessler & Horman, convey a lot to Henry Horman? If so, when was it; what was the consideration for it? State all about it.

Ans. We did; it was in the latter part of January, 1876, or first of February; the consideration was $300; he paid the money for it to Fred. Horman; I sold it first to Fred., but no deed was made; then Fred. sold it to Henry Horman.

Quest. What did Fred. pay you for your interest in the lot?

Ans. He gave me credit for it.

Quest. Were you owing Fred. Horman at that time; if so, how much?

83 Ans. I was back with my account with him; I can't tell how much.

Quest. Did all the goods Kessler & Horman sold to Christ. Horman after Christ. Horman went out of the firm go to apply on the indebtedness of Kessler & Horman to Christ. Horman?

Ans. Yes; we did not sell him any for cash that I know of; it was the same as cash to us as it went to pay our debt.

Quest. Did Kessler & Horman sell a lot to Christ. Horman; & if so, when & what was the consideration paid?

Ans. Yes; for $375.00 in the fall of 1875; he paid us the money for that

Quest. How did it come that he paid you the money when you were owing him?

Ans. We would not sell it on any other consideration, as we needed the money.

Quest. What was that note of Henry Schwier's for $295.00, given for, that you gave to Christ. Horman?

Ans. It was my interest in a lot sold to him.

Quest. How much did you get for the lot sold to Schwiers?

Ans. I got for my share $295.00; I don't know how much
84 Geiler got; Schweirs is Geiler's step-son.

Quest. Was there not another lot sold by you and Geiler to some one else?

Ans. Yes, to Frederick Schwiers, another step-son; I got $250.00 for my share out of that; I don't know whether Geiler got anything or not; I got that $250.00 from Mrs. Geiler, the mother of Fred. Schwier.

Quest. Where was the $800.00 paid to you by Geiler for your interest in these lots? Who was present at the time? Was the deed given by you to Geiler at the time & place the money was given to you?

Ans. It was paid in his house; his family was present; the deed was given by me to him at the same time & place that the money was paid.

Quest. What became of those notes of yours to Geiler? State all about that.

Ans. I got them back from Geiler at the same time I got [gave?] the the deed; I destroyed the notes.

Quest. For what length of time did these notes run?

Ans. They were one year notes.

Quest. Had you paid any interest on either of said notes; if so, how much?

85 Ans. I paid interest when they were due; eight per cent.

Quest. Did Fred. Horman know of your sale to Geiler at the time it was made, or before it?

Ans. I don't think he did.

Quest. Why did you not tell him?

Ans. He had nothing to do with it.

Quest. Did he not hear any of your conversations about the trade?

Ans. No; I think not.

Quest. Was not the trade made some time before the deed was made?

Ans. No.

Quest. Where did Geiler get the money to pay you the eight hundred dollars?

Ans. I don't know. He got some money from Cincinnati before that time, some time; I don't know how long.

Quest. Did you not act as Geiler's agent in making deposits of money for him in the bank & other matters?

Ans. I was his agent & did all the business he had. I deposited money in the bank for him in my name.

Quest. What bank did you deposit it in?

86 Ans. I deposited in the Discount & Deposit Bank and First National Bank, of Chattanooga.

Quest. Did you deposit all of his money in your name?

Ans. All I did deposit I deposited in my name. I collected all his money he got from Cincinnati.

Quest. How much money did you put into that property that you sold to Geiler in January, 1876?

Ans. I put in $2,325.00, & had one-fourth interest in it.

Quest. How did he come to pay you the $800 in money?

Ans. I owed him $1,525.00, and the $800 he paid me made the $2,325.00, the am't I had put in. I sold the interest in two *last*, 27 & 25 feet lots, one for $295.00 and one for $250.00, which was all I got out of it for the work I put on it.

Quest. What work did you put on the lots?

Ans. Labor. I helped improve it, to fill up, make sidewalks. I worked around on them all the time.

Quest. Did you help build the house?

Ans. No, I worked on it, but I had no interest in it. *Quest.* I did all kinds of work. Geiler did not hire me to work. I did it for my own benefit. He never paid me. I boarded with him, and he did not charge me for board. That was the pay I had.

Quest. How long were you building the house?

87 Answer. I can't tell; may be two, three, or four months.

Quest. Did you ever pay Geiler anything for board; if so, when, and how much?

Ans. I did pay him all the time, except when I was working for him I did not pay him for board. I paid him sometimes four & sometimes five dollars per week. I paid it sometimes in two weeks, one month, and sometimes two months, always to his wife.

Quest. What mechanic had charge of building the house? Did he have a contract, and who was the contract with?

Ans. Henry Masters. He had a contract. I made the contract with him in Geiler's name. I put my name in as well as Geiler's.

Quest. How much was Masters to be paid for building the house?

Ans. I can't tell. In the neighborhood of $3,000.

Quest. How much did the house cost in all?

Ans. Between $4,500 & $5,000. Near $5,000, I think.

Quest. To whom was the bal. of the money paid aside from what you paid to Masters?

Ans. To different parties. I can't tell.

88 Quest. Was the contract with Masters a written contract. What became of it?

Ans. It was a written contract. I don't know what became of it.

Quest. Did you keep bills or receipts of the other expenditures, and what became of them?

Ans. We did keep bills and receipts. I turned them over to Mrs. Geiler.

Quest. Where did you deposit your own money?

Ans. I had some money of my own. I had some, but I did not deposit it. I deposited $5,300.00 in the Deposit Bank of Chattanooga, at the same time I came down here to Chattanooga. Then I took $2,000 of it out and deposited it in the First National Bank. It was all deposited in my name, and I paid it all, or nearly all, out toward the building. This money was Geiler's money.

Quest. Where did said money come from? Where and on what account did you get it?

Ans. I sold a house in Cincinnati for Mr. Geiler for ten thousand eight hundred & fifty dollars ($10,850.) The first payment on
89 it was $5,000, and the rest of the money I got from Mr. Geiler's wife.

Quest. How did you sell the house aforesaid?

Ans. W. Ounback bought it. It was sold at public outcry. Haffner & Bauman were the auctioneers.

Quest. On what terms was the sale made?

Ans. $5,000 cash; balance in one, two, or three years, of equal instalments.

Quest. What was date of sale.

Ans. In May, 1874. I think it was about that time.

Quest. When did you receive the $5,000, and in what?

Ans. About two week' after the sale. I received it in money.

Quest. Did you collect said bal.—three notes or payments?

Ans. I did not in the first instance, but after the money was sent here to Geiler he handed it over to me.

Quest. What did you do with the money?

Ans. With it I paid the first due note on the property Geiler had bought here, which was something near $2,000. This payment was made out of the first money sent to him. Shortly after the money on the first due note was sent here to Geiler he had the other two notes sold
90 in Cincinnati at a discount, and soon received that money also and handed it over to me. With this money I paid the balance that Geiler owed on the real estate which he had bought here.

Quest. What real estate was it?

Ans. Northwest corner of Chestnut & 9th, or Chestnut and James, in Chattanooga, Tennessee, numbered 63, 61, and part of 59; all on Chestnut street.

Quest. To whom did you pay said moneys on real estate?

Ans. I paid it to Somerfield Key, who was agent for W. L. Spencer.

Quest. How much was paid in all for the lots you bought of Spencer?

Ans. $9,300, except a small discount on bal. note.

Quest. Where did you get the money that you paid for the lots—the $2,325.00?

Ans. I had about $2,000.00 of my own, and I borrowed $875.00 from Mr. Geiler.

Quest. When did you come here from Cincinnati?

Ans. I came here first in Feb., 1874, and then went back and came again in May, 1874.

Quest. When did Geiler come?

91 Ans. He came five or six weeks before I came the last time.

Quest. When did you buy the property of the Spencers?

Ans. In the latter part of March or first of April, 1874.

Quest. Was Geiler here when the property was bought?

Ans. No.

Quest. Had he ever seen it before it was bought?

Ans. No.

Quest. Did you buy it on your own judgment?

Ans. Yes; with the advice of Henry Schwier.

Quest. How long had you known Geiler before you came to Chattanooga?

Ans. About five or six years.

Quest. Did you act as agent for him before you came to Chattanooga?

Ans. I acted as agent for him in Cincinnati about selling his house.

Quest. Where was Fred. Horman when you sold your interest in those lots to Geiler?

Ans. I cannot tell you if he was here or not.

Quest. Don't you know that he was at that time absent at Cincinnati?

Ans. I can't tell you for certain; I guess he was.

92 Quest. What did he go to Cincinnati for?

Ans. He went to Cincinnati to collect some money for me and to buy.

Quest. Did he buy any goods at that time?

Ans. I think he did.

Quest. Did he collect any money for you?

Ans. No.

Quest. Who did he go to collect money from? How much did such persons owe you? State all about it.

Ans. Mike Schenerea, who works in a brewery; he owes me about $18.00. George Cleckler, in Hall's safe shops; about 12 or 14 dollars. That is all. They are still due.

Quest. Don't you know that you were pressed for money before he went to Cincinnati, and that the firm of Kessler & Horman were in failing circumstances before he went to Cincinnati?

Ans. No; I didn't have the slightest idea of it.

Quest. Did you tell Fred. Horman about your sale to Geiler when he returned?

Ans. I did not.

Quest. When was it that you found you were insolvent?

Ans. About the day before we made the assignment.

93 Quest. Where were your two notes destroyed?

Ans. Up at Geiler's house in the presence of Tom Evans.

Quest. Where did you get the $2,000 you brought here?

Ans. I worked for it.

Quest. For whom did you work in Cincinnati?

Ans. I worked in Hall's safe factory.

Quest. Has Geiler got all that his house in Cincinnati sold for, or is some of it still back?

Ans. It has all been paid.

Quest. When was the last of it paid?

Ans. It was some time in 1875. It came by express.

Quest. When was the $875.00 paid to you, and who paid it to you, and when was it?

Ans. In Cincinnati. Mrs. Geiler paid it to me. It was in 1874; about May.

Quest. Did you give your note for it at that time, or when?

Ans. I gave my note for it at that time or shortly afterwards.

Quest. Was that before you came to Chattanooga?

Ans. Yes.

Quest. When did you pay the $2,325.00 on the property?

Ans. It was paid about May, 1874, at the time I got the $875.00.

94 Quest. Was the $2,325.00 paid as part of the first payment for the property?

Ans. I paid it to Geiler for all the interest I had in it. I put it in a check with Geiler's money making in all $4,800.00, and Geiler brought the check to Chattanooga and made the first payment for the land. It might have been before May.

Quest. What was the amount of money that you had put into the firm of Kessler & Horman & Co.?

Ans. $1,273.48.

Quest. When did you put that in?

Ans. At different times from the first beginning up to the time Christ. Horman went out.

Quest. How much did Kessler & Horman owe Henry Horman at the time of the assignment?

Ans. $500. The correct statement is on the list.

Quest. Does the list you gave to Jones contain all your property?

Ans. Yes; all we had, both as individuals and as a firm; I have no other property except what is on that list, nor has Fred. Horman, that I know of.

Quest. Where was the house that Geiler sold in Cincinnati, or that you sold for him, situated?

95 Ans. At 505 Race street.

(Signed) JACOB KESSLER.

Sworn to & subscribed before me the 14th day of June, 1876.

(Signed) A. J. TREWHITT.

United States Commissioner, Eastern District of Tennessee.

Deposition of Henry Masters.

Depo. of Henry Masters.

Int. 1st (by compl't). Do you know who contracted for and built the brick house situated on the corner of James & Chestnut streets in Chattanooga, Tenn.? If so, please state.

Ans. I myself contracted for said building about July, 1874.

Quest. 2d. Was there a written contract for building said house? If so, where is it; what has become of it?

Ans. There was a written contract at the time signed by John Geiler, Jacob Kessler, & myself; I have lost the contract and cannot find it.

Quest. 3d. Who wrote the contract, and who made the trade with you?

Ans. I am of the opinion that H. Swier wrote the contract, and

96 witnessed the same, and the business transaction was made with Jacob Kessler for the firm; Geiler not being versed in contract'.

Quest. 4. What interest did you understand from the parties each one had in the property. I mean what interest did you understand Kessler owned, and what Geiler?

Ans. I suppose *the* they both had equal share in the building transaction. Could not find what amount, in fact never asked him; but understood by Swier that his mother had the most of the money, which made H. Swier very officious in the matter.

Int. 5th (by compl't). Did you understand what interest each had in the land on which the house was built; if so, what?

Ans. I did not know, or hear how much.

Quest. 6. You say the contract was with Kessler & Geiler; was it to build the house for them, and did it recite their interests?

Ans. I suppose that the house for their use was built for them, as I considered the contract to be in that shape.

97 Int. 7th (by compl't). Who paid you, and have you been entirely and fully paid for your work?

Ans. Jacob Kessler always paid me, and I was paid in full when house was completed.

Int. 8th (by compl't). Did Kessler work any on the building; if so, how much work did he do?

Ans. He sometimes helped Geiler in stone work and leveling the yard and digging. I suppose about one hundred and fifty dollars would pay for his work; and then I suppose that superintending the work and duties performed would be worth about the same amount.

Int. 9th (by compl't). Do you mean that Kessler superintended the work; did he have control of things?

Ans. He did; in all the work about the building.

Cross-examination:

Int. 1st (by def't). When Kessler paid you, do you know with whose money he paid you?

Ans. I did not know. All I know that he was paymaster.

Int. 2d (by def't). Where is Schwier you speak of?

Ans. H. Swier is Mrs. Geiler's son from her first husband, whose name was Swier. He is now in town.

1 day.

H. MASTERS.

98 Sworn & subscribed before me 11th April, 1877.

T. M. McCONNELL, *C. & M.*

(Endorsed:) Filed 11' Ap'l, 1877. T. M. McConnell, c. & m.

Order.—Ap'l term, 1877.

R. M. BARTON, ASSIGNEE, &C., *vs.* JOHN GEILER. } Order. April 21st, 1877.

By consent of parties, and by unanimous consent of the bar, the trial of this cause is set for the first day of the next special term.

Agreement as to reading proof.

Agreement about proof. In the chancery court at Chattanooga, Hamilton County, Tenn.

R. M. BARTON, ASSIGNEE OF KESSLER & HORMAN,
vs.
JOHN GEILER.

In this cause it is agreed that such parts of the proof in the case of R. M. Barton, jr., assignee, vs. Henry Horman as the parties may deem relevant may be read as evidence in this case, subject to all legal ex-
99 ceptions on account of competency and relevancy.

R. M. BARTON, JR.,
N. H. BURT,
For Geiler.

(Endorsed: Filed 21st April, 1877. T. M. McConnell, c. & m., by J. T. Hill, d. c. & m.

Deposition of Chris. Horman in bankrupt court.

In the district court of the United States for the eastern district of Tennessee.

IN THE MATTER OF KESSLER & HORMAN, BANKRUPTS. | In bankruptcy. Depo. of Chris. Horman.

At Chattanooga, on the 13th day of June, 1876, before Hon. Wm. Aiken, one of the registers in bankruptcy of said court, district of East Tennessee.

CHRIST. HORMAN, of Chattanooga, in the county of Hamilton, State of Tennessee, being duly sworn and examined at the time & place above mentioned, upon his oath says:

1st. Quest. (by assignee). When was the firm of Kessler, Hor-
100 man & Co. formed, and who were the members of the firm?

Ans. On 11th of June, 1874; Jacob Kessler, Fred. Horman, and myself.

2d Quest. What were the terms of your partnership?

Ans. Jacob Kessler & Fred. Horman made a proposition for me to go in with them. Stock was taken, and I became a partner. I was to be an equal partner, have an equal share of the profits. I put in money at different times after that. There was no agreement made at the time as to how much I should put in. I paid in a little over $2,000 at various times. I have a paper, given me at the time when I went out, showing how much I had paid in.

3rd Quest. When did you go out of the firm?

Ans. On the 6th of September, 1875.

4th Quest. Why did you withdraw?

Ans. I did not think it would justify me to stay in; it was not paying me.

5th Quest. What was the condition of the firm at the time you withdrew?

Ans. The firm owed some $700 and more; they stood fair. The
101 debts coming to the firm were bad.

6th quest. How much did the firm owe you *you* on final settlement at the time of your withdrawal?

Ans. Some—I will produce the writing given me on final settlement and make it a part of this deposition; it will show the true amount. They assumed the debts of the firm. They, Kessler & Horman, gave me notes for the am't due from the firm. The notes were not secured. They have been most paid. I received $200 in cash when I went out—the balance; all that the firm owed me except about one hundred & ninety dollars, for which I have a note.

7th quest. Have you proved your claim and filed it in this cause?

Ans. Yes, sir.

8th quest. When were the notes given you on settlement paid?

Ans. My notes were paid by goods bought since that time from them, except the $200 in cash.

9th quest. Do you know when the firm of Kessler & Horman first became embarrassed & in a failing condition?

Ans. No, sir; my first knowledge of it was from my nephew, Fred.
Horman, who came to me to borsow money, saying they had some
102 notes to meet, but could not do it because Kessler had overdrawn.
It was some two weeks or more, don't remember the exact time, before their assignment.

Quest. Have you not bought a lot on Branham street in this place from Jacob Kessler and Fred. Horman?

Ans. Yes, sir; I bought it last fall; gave $375. I paid cash for it at the time. It was after I had gone out. I paid the money over to them at the time. They wanted the money.

Quest. Do you know of any assets belonging to the firm or individuals that can be reached?

Ans. I do not.

Quest. Do you know the am't of capital that Fred. Horman paid into the original firm of Kessler and Horman?

Ans. I can't tell now. I will bring a paper which will explain it all. I herewith file a copy of the settlement which shows the am't paid in by me & by Fred. Horman & Jacob Kessler.

Quest. By W. S. MARSHALL, att'y for Darby & Co. and others, creditors:

Quest. Did you pay in any money into the firm of Kessler, Hor-
103 man & Co., when you first went in; if so, how much, and in what was it paid?

Ans. I did not. I paid in as specified in the writing filed showing the dissolution of the firm. The first paid Feb'y 1st, 1874, $235.00, and after that as shown by said writing.

Quest. After you went out of the firm of Kessler, Horman & Co., did you go into the business on your own account, in Chattanooga; and, if so, where did you get your goods?

Ans. I went into business in Chattanooga on my own account in Dec'r, 1875, and got my goods of Kessler and Horman.

Quest. What was the value of the goods you got of them at that time?

Ans. I don't remember the amount. The bills will show.

Quest. Did the goods you got of them go to apply on their indebtedness to you?

Ans. I gave them credit on their indebtedness to me; of course I did not pay money when they were owing me.

Quest. Have you paid them any money for goods since you went
104 into business on your own account?

Ans. No.

Quest. Will you please present your bills of goods you got of Kessler & Horman since you went out of the partnership with them, and give the amount of each?

Ans. Feb'y 5th, 1876	127 88
Jan'y 28th, "	122 64
Dec'r 1st, 1875	454 17
Jan'y 28th, 1876	529 70
Jan'y 5th, 1876	164 05
Dec'r 1st, 1875	275 26
Dec. 1st, 1875	13 93
Dec. 14th, "	206 78
Feb'y 2d, 1876	68 40
Dec'r 20th, 1875	10 00
	$1,972 81

Quest. What was the amount of the indebtedness of Kessler and Horman to you after the payment of the $200.00 in cash on the 6th of Sept., 1875; and if they gave their note therefor, state the amount of all the notes.

Ans. The amount they owed me after the cash payment of $200.00 was made, was $1,767.78. for which they gave me three notes of $500 each, dated Sept. 6th, 1875, & one for $267.68.

105 Quest. What has become of all these notes?

Ans. I have given them all up except one, which is still in my possession; the last note due for $500.

Quest. Do not the goods which you have purchased from Kessler and Horman since you went out of the firm, and which you say were to apply as payments on said indebtedness, amount to more than the indebtedness, and therefore more than pay all of said notes.

Ans. Yes; they amount to $1,972.81, and allowing me $41.53 for interest on the notes would leave $163.60 due from me to Kessler & Horman for the goods. When I went out of the firm, we made an agreement among ourselves that they were to pay me one-third of the accounts due Kessler and Horman & Co., when collected by them, and there is $191.30 due me from them for collections made by them up to Feb'y 4th, 1876, as is shown by day-book of Kessler and Horman now in the possession of the assignee, page 162. The agreement I refer to is copied on page 160 of the same book to which reference is made, which is a copy of one I have in my possession.

106 Quest. Why did you desire to go out of the firm of Kessler, Horman & Co.?

Ans. I thought it did not pay, and at the same time I did not agree with Kessler.

Quest. Were there any books kept which showed the amount that each member put into the firm of Kessler, Horman & Co.?

Ans. The day-book shows the amounts that I put in. It should show the amount that the others put in after the partnership was formed, if they did put in any. At least, I think so, if it went to the firm.

Quest. Do you know anything about Jacob Kessler borrowing $650.00 from John Geiler about August 1st, 1875, or did he put in that amount of money, or any other amount that you know of, into the firm business at that time, or any time between that & the time you left the firm?

Ans. I do not know anything about his borrowing the money, and know nothing about his putting it into the firm business in any way.

Quest. Where does Henry Kaiser, jr., live in Cin.?

Ans. He lives at Coulter's & Co. grocery, corner 6th and Main st., Cincinnati.

107 Quest. When did Kessler & Horman begin to be embarrassed in their payments; did it not occur shortly after you left the firm?

Ans. I don't know anything about that. When I went out, the debts were not much.

Quest. What was the am't of the goods you bought for Kessler in Cincinnati?

Ans. I paid Charley Brown $779.41, I think it was. I am not positively certain of that. I paid other bills for him to the amount of $106.00. He sent me a note at that time, short time after I paid for the goods, for $885.41.

Quest. When did he pay this note?

Ans. He paid it January 19th or 20th, 1876.

Quest. Did he pay you any more at this time than the am't of this note and interest?

Ans. He paid me at this time $982.25. This included the am't due on the note, principal & interest, and a bill for $24.00 for boots. The interest on the note was 8%. He calculated the interest, and I suppose it was right.

Quest. What was this payment made in; cash or what?

108 Ans. By a note on Schwier and Loomis for $295.00; the balance he paid in cash.

C. HORMAN.

Sworn & subscribed to before me this June 16th, 1876.

DAN. J. DUFFY, *U. S. Com'r.*

(Endorsed:) R. M. Barton, jr., vs. John Geiler. Filed 25th June, 1877. T. M. McConnell, c. & m., by J. T. Hill, d. c. & m. Deposition of Chris. Horman admitted by consent on trial of cause.

Assignment.—Kessler & Horman to R. G. Jones.

Assignment of Kessler & Horman.

We, Jacob Kessler and Fred. Horman, partners under the firm-name and style of Kessler & Horman, to pay our debts, convey to R. G. Jones,

as trustee, all of our stock of groceries in our store-house, on the north-west corner of Ninth and Chestnut streets, Chattanooga, Hamilton County, Tennessee. Said Jones will at once take possession and sell, privately or publicly, upon such advertisements as he may think best, in the meantime taking an inventory of the stock on hand, and advising our
109 creditors. We further convey all of our book debt accounts, judgments, &c., to said Jones, our object being to let all on han' go to pay our debts. Pressure of times has made us unfortunate. Oure object is to equalize our assets for the creditors, only providing that Nash H. Burt, our attorney, shall first be paid $50 for legal services, including the writing of this deed, and the expenses of this deed in the sale of the property, &c.

The proceeds of sale of said property will be applied as follows:

1.	To pay Nash H. Burt, our attorney	$50 00
	" " expenses of this trust & R. G. Jones, trustee, &c.	
2.	" " the following creditors equally, whose debts are, viz:	
	Henry Horman, Cincinnati, O	$500 00
	John Geiler, Chattanooga, Tenn	610 00
	Charles Brown & Co., Cincinnati, O	703 95
	J. T. Warren & Co., " "	93 50
	John B. Love, Philadelphia	224 35
	Thomas Streiff, Cincinnati, O	159 94
	C. G. Tacher & Co., Louisville, Ky	408 00
	H. Welsh & Co., New York	276 96
	Borough & Wing, Richmond, Va	106 36
110	Flacks & Reiman, Quincy, Ill	84 50
	Royal Baking Powder Company, New York	53 25
	Samuel Couples & Co., St. Louis, Mo	127 57
	Elsas May & Co., Atlanta, Ga	29 09
	Darby & Co., Baltimore, Md	104 40
	Walker, McGraw & Co., Cincinnati, O	96 05
	M. Haralson & Co., Atlanta, Ga	78 15
	Ourbacker, Gillanon & Co., Louisville, Ky	63 39
	Morgenthen & Brown, Cincinnati, O	88 31
	Charles Somnerr & Co., Baltimore, Md	38 70
	Leigh & McClure, Chattanooga, Tenn	18 00
	Cornwall & Brother, Louisville, Ky	213 67
	Vance & Kirby, Chattanooga, Tenn	22 15
	Christ. Horman, " "	191 30
		4,602 39

If there are other creditors it is upon the acceptance of the provisions of this deed that they will come in and share with the above creditors in the second clause. We do not ourselves require of said Jones a bond, as required under the statutes of Tennessee, or waive this, leaving it to our creditors, or any number of them, to require a bond if they desire it.

111 Witness our hands, &c., this the 10th day of February, 1876.

JACOB KESSLER.
FRED. HORMAN.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared before me, J. S. Bell, dep. clerk of the county court of said county, Jacob Hessler and Fred. Horman, the within-named bargainors, with whom I am personally acquainted, & who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand at office this 10th day of Feb'y, 1876.

J. S. BELL,
Dep. Clerk.

I accept the foregoing conveyance & consent to act as trustee. Feb'y 10th, 1876.

R. G. JONES.

STATE OF TENNESSEE,
Hamilton County:

The above assignment and certificate were filed 10th Feb'y, 1874, at 4 p. m.; entered in note-book No. 2, page 39, & recorded in book B, page 147 & 148.

Witness my hand at office in Chattanooga.

H. C. BECK, *Register.*

112 (Endorsed:) Kessler & Horman to R. G. Jones. R. M. Barton, assignee, vs. John Geiler et als. Filed 25th June, 1877. T. M. McConnell, c. & m.

List of creditors of Kessler & Horman.

List of creditors of Kessler & Horman.

Names of creditors.	Residence.	When due.	Amount.
Thomas Streiff	Cincinnati, Ohio	Feb'y 3d, 1876	159 94
Sam'l Cupple & Co	St. Louis, Mo	Sept. 9th, 1876	128 32
Charles Brown & Co	Cincinnati, Ohio	Dec. 4th, 1875	703 95
Borough & Wing	Richmond, Va	April 2d, 1876	147 60
Elsas May & Co	Atlanta, Ga	Jan'y 8th, 1876	29 09
Ourabacker, Gilmore & Co	Louisville, Ky	Jan'y 27, 1876	63 39
Vance & Kirby	Chattanooga, Tenn	Jan'y 21, 1876	22 15
Welsh & Co	New York, N. Y	March 3d, 1876	276 96
Darby & Co	Baltimore, Md	Jan'y 12, 1876	105 65
C. G. Tachan & Co	Louisville, Ky	Feb'y 11, 1875	408 00
R. G. Jones, (receiver)	Chattanooga, Tenn		100 00
Walker, McGraw & Co	Cincinnati, Ohio	April 25, 1876	96 00
Cornwall & Bro	Louisville, Ky	March 6, 1876	218 67
Flacks & Reiman	Quincy, Ill	Dec. 27, 1876	84 50
Christian Horman	Chattanooga, T		32 83
J. L. Warren & Co	Cincinnati, Ohio	Jan'y 26, 1876	93 50
113 Leigh & McClure	Chattanooga, Tenn	June 1st, 1876	18 00
Baking Powder Co. by William Zeigler, treas.	New York, N. Y	Dec. 27, 1875	53 25
John B. Love & Co	Philadelphia, Pa	May 5, 1876	224 35
Charles G. Summers & Co	Baltimore, Md	Jan'y 24, 1876	38 70

R. M. BARTON, Esq.:

The above is a correct copy of proofs filed in my office. Some changes may have been made since. This is under your control as assignee.

Yours truly,

WILLIAM AIKEN,
Register.

(Endorsed:) R. M. Barton, assignee, vs. John Geiler et al. Filed 25th June, 1877. T. M. McConnell, c. & m.

Depo. of R. M. Barton.

In the chancery court at Chattanooga, Hamilton County, Tenn.

R. M. BARTON, JR., ASSIGNEE OF KESSLER & HORMAN,
vs.
HENRY HORMAN.

The deposition of R. M. Barton, jr., compl't, taken before the clerk & master by consent of parties, on this 4th day of Feb'y, 1877.

114 Present, complainant and Nash H. Burt, att'y for defendant.

Witness R. M. BARTON, being duly sworn, deposed as follows:

1st quest. (by compl't). Were you present upon the 13th day of June, 1876, when the deposition of Henry Horman was taken before the U. S. commissioner in the matter of the bankruptcy of Kessler & Horman?

Ans. I was, though I am not now certain that the deposition of Henry Horman was taken on the 13th, or that there were any questions asked him on that day. I, as assignee, had had Henry Horman, John Geiler, Jacob Kessler, Thomas Evans, and Chris. Horman summoned to appear at the office of Baxter & Barton to be examined on that day in the matter of Kessler & Horman, bankrupts, as the bankrupt law provides, and by agreement with me Mr. Wm. Aiken, register in bankruptcy, was there to take and hear the evidence. But as the examination required more than one day Mr. Aiken left on the 14th, with instructions to finish the examination before a United States com'r. I do not certainly know on
115 what day Mr. Horman was examined, but he was examined partly by me and partly by W. S. Marshall. His deposition was sworn to before Dan'l J. Duffy, U. S. com'r, on the 16th of June, 1876.

Int. 2d (by compl't). If you remember what the said Henry Horman deposed, with reference to the matters upon which this suit is predicated, please state it. Give your reasons for the correctness of your statement, and file any papers you may have in your possession in support of the same.

Ans. I do remember his statements in reference to the lot he got from Kessler & Horman, which it is the object of this suit to recover. I herewith file and make a part of this my deposition an exact and verbatim copy of his evidence given then, the questions asked him, and his answers thereto. On the examination I wrote my questions and his answers to them, and Maj. Marshall did likewise. I read over the answers I had written to see that they were correct, and after his deposition was finished I read it all over to him before he swore to it, & he said it was correct.

The copy I herewith file, marked Exhibit A, is a true, correct, &
116 verbatim copy of his evidence as then given and was made by me from his written deposition, and I know he made the statements as therein set forth. I have read over the copy carefully, and recollect each statement as made by him.

Int. 3d (by compl't). Did Henry Horman produce the notes referred to by him in his first answer as it set forth in Exhibit A?

Ans. He did; and my recollection is they corresponded with the copies filed with his answer.

Int. 4th (by compl't). Have you said copies of said notes which were filed with his claim?

Ans. I have in my possession among the papers relating to the bankruptcy matter of Kessler and Horman the copies of the notes filed by Henry Horman, and I herewith file copies of them, marked Exhibit B, made a part of my deposition.

Int. 5th (by compl't). Have you been able to find any property (exclusive of the stock of goods assigned) of Kessler and Horman, or either of them, except that sued for in this case, and in the case of yourself vs. John Geiler, now pending in this court?

117 Ans. I have not. Kessler has attempted to convey all the property he owned to John Geiler (except the stock of goods assigned), and I have not been able to find any other except this lot.

Int. 6th (by compl't). Please state if you are the assignee of Kessler and Horman, bankrupts, and state also what the amounts of their assets & indebtedness are?

Ans. I am the assignee in bankruptcy, & empowered & vested with all the rights & powers given to assignees in such cases. The am't of their assets that I have been able to realize is about eleven or twelve hundred dollars. Their indebtedness proven is something over five thousand dollars. And further saith not.

R. M. BARTON, JR.

Sworn to and subscribed before me, 4th April, 1877.

T. M. McCONNELL, *C. & M.*
By J. T. HILL, *D. C. & M.*

The complainant agrees that the defendant's att'y may cross-examine at any time before the 8th Apr'l, 1877.

R. M. BARTON, JR., *Compl't.*

(Endorsed:) R. M. Barton, assignee, vs. Henry Horman. Filed 4th April, 1877. T. M. McConnell, c. & m., by J. T. Hill, d. c. & m.

118 *Exhibit A to R. M. Barton's depo. above.*

Exhibit A to R. M. Barton's depo.

A copy of the evidence of Henry Horman before the United States commissioner, given in the matter of Kessler & Horman, bankrupts, viz.:

HENRY HORMAN, being duly sworn and examined, answers as follows:

Quest. Have you the original notes referred to in your claim filed in this proceeding? if so, please present them.

Ans. I have, and herewith present them.

Quest. For what was the first note of $650.00 executed by Fred. Horman in Cincinnati, Oct. 20, 1874, given?

Ans. For borrowed money.

Quest. Was he pretty well off at that time, and did he own much property?

Ans. He had no property at that time. What he had in money I cannot tell. He was running a stand at that time.

Quest. When did he come to Chattanooga?

Ans. About October or November, 1874, I think.

Quest. Do you know what amount of money he brought with him to Chattanooga?

Ans. I cannot tell.

119 Quest. Do you know how much he invested in the business of Kessler and Horman?

A. No, sir.

Quest. What was the other note executed by Kessler and Horman on 1st October, 1875, for $500, given for?

Ans. For borrowed money.

Quest. Did you lend them the money at that time, and was it all paid over to them on that day; & if so, in what—money, check, draft, or how?

Ans. It was all paid over to them on the day the note bears date, in cash.

Quest. Have you ever received anything on either one of those notes; and if so, when and in what?

Ans. On the individual note of Fred. Horman I have given a credit I received of $300 in a deed to a lot in Chattanooga, on the corner of Frank and Boyce streets; this credit is entered Feb'y 4th, 1876.

Quest. Did you buy the lot on that day?

Ans. Yes, sir.

Quest. From whom?

Ans. Fred. Horman. It was deeded from Kessler & Horman.

120 Quest. Did you give anything more for the lot than the credit you have made on the note of Fred. Horman?

Ans. No, sir; that was all.

Quest. Had there been propositions made to you to trade this lot before? If so, by whom?

Ans. There had been propositions made to me before to buy this same lot. I do not remember the times. My brother Fred. did the writing to me.

Quest. When did you come to Chattanooga?

Ans. Some time after they made the assignment.

Quest. Where were you when you bought the lot?

Ans. In Cincinnati. The trade was made through letters. I have destroyed the letters.

Quest. Have you ever had any other transactions with Kessler & Horman than those above mentioned?

Ans. None other, except selling them goods.

Quest. Were you acquainted with the affairs & condition of Kessler and Horman at the time you loaned them the $500.00?

Ans. I knew nothing of their condition.

Quest. When did you first become acquainted with the condition of their affairs?

Ans. Not until I came down here after the place had been closed up.

121 Quest. Were either Kessler or Horman present when the note for $500.00 was given, Oct. 1st, 1875?

Ans. Horman was up in Cincinnati at that time.

Quest. How did you come to loan him the money? What did he say they wanted it for? And what did they do with it?

Ans. He said they were short of money at the time—I don't know what he did wit' it.

Quest. Do you know whether or not it went to the use of the firm?

Ans. I can't say.

Quest. Do you know whether or not it went to the use of the firm?

Ans. I can't say.

Quest. When did you get the deed to that?

Ans. I don't think the deed was sent to me at all. I got it after I came to Chattanooga.

Quest. What day did you come here?

Ans. I can't say, exactly. They said they had been closed up four days after the assignment, and had just opened up again when I got here.

Quest. Did you know anything of the assignment until you came?

122 Ans. No; I had sold my place on condition, & did not live there at my business place, and might have gotten a letter if I had remained at my old place of business.

Quest. How long before you left Cincinnati had it been since you received a letter from them or either of them until you came?

Ans. I could not begin to tell.

Quest. Do you think you had received a letter in Feb'y from either of them?

Ans. I think I got a letter in Feb. *lot*, but I can't say. I am not certain about that. I think the letter must have been before February.

Quest. When did you put that endorsement on that note, of the price of the lot?

Ans. Feb'y 4th, 1876.

Quest. How did you come to put the credit on the note before you got the deed?

Ans. I cannot say. I must have put it on the note afterwards, and dated it the same date as the deed, or done it from a letter. I can't remember.

Quest. Was the deed first given to you after you came down here?

Ans. I can't say. It is my impression it was.

123 Quest. May not then that endorsement have been made on the note after you received the deed?

Ans. I do not remember.

Quest. When was the deed registered?

Ans. I do not know. They attended to that themselves.

Quest. Did you pay for the registration fee? Did you get the deed from the register's office?

Ans. I think I got it from my brother, Fred. Horman, after I got here.

Quest. Was not Fred. Horman in Cincinnati in the month of Jan'y, 1876?

Ans. I think he was.

Quest. Do you know of any assets belonging to the firm of Kessler & Horman, or to them as individuals, that can be reached?

Ans. No, sir.

(Signed) HENRY HORMAN.

Sworn to and subscribed before me this June 16, 1876.
(Signed) DANIEL J. DUFFEY,
U. S. Com'r.

Exhibit B, to R. M. Barton's deposition.

Exhibit B, to R. M. Barton's depo.

COPIES OF NOTES PRODUCED BY HENRY HORMAN.

CINCINNATI, *October* 20, 1874.

124 On January the 1st, 1876, I, the undersigned, promised to pay to Henry Horman the sum of six hundred and fifty-four dollars ($654.00), with eight per cent. interest. Value received.
(Signed) FRED. HORMAN.

(Endorsed:) Feb'y 4th, 1876. Received by deed $300.00 of lot corner Frank and Boyce sts.

CINCINNATI, *Oct. 1st*, 1875.

$500.00. One day after date we promise to pay to H. Horman, the sum of five hundred dollars, with eight per cent. interest. Value received.
KESSLER AND HORMAN.

Final decree.—June special term, 1877.

Final decree. June spec'l term, 1877.—June 27th, 1877.

R. M. BARTON, JR., ASSIGNEE, &C.,
vs.
JOHN GEILER.

This cause coming on to be heard at this the special term before Hon. Wm. M. Bradford, chancellor, &c., on the pleadings, depositions,
125 agreements, evidence, and other proof, the evidence in the case of R. M. Barton, jr., vs. Henry Horman, being read and considered as evidence in this cause, and the deposition of Chris. Horman taken, on an examination before Wm. Aiken, U. S. register in bankruptcy, was by consent of parties admitted as evidence in both cases, the case of R. M. Barton, assignee vs. Henry Horman, by consent being heard with this case, the parties waiving all informalities in any of the proof, but reserving the benefit of all objections to the relevancy and competency of any evidence, and the record being read and argument of counsel heard, it appeared to the court that the conveyance of the land described in the pleadings by Jacob Kessler, on the 18th Jan'y, 1876, to John Geiler, was and is fraudulent, and made to hinder, delay, and defeat the rights of creditors, and was made in fraud and contravention of the provisions of the bankrupt act, and it is so adjudged and decreed, and the same is
126 hereby canceled, declared void, and for nothing held.

And it appearing to the court that the said R. M. Barton is assignee in bankruptcy of Jacob Kessler, and that by virtue of the assignment made to him, and the rights and interests vested in him by law, he

is entitled to such interest in the property described in the bill as was owned by Jacob Kessler before his fraudulent conveyance to Geiler.

And it not appearing fully to the satisfaction of the court that Kessler owned more than a one-fourth interest in said property, house & lots; but the court being of the opinion that said Jacob Kessler did own a one-fourth interest in said lots described in the bill, and the house and other improvements erected thereon, is pleased to order, adjudge & decree that complainants recover, and he is hereby vested with said one-fourth individual interest in said property, house and lots and appurtenances.

And if further appearing that said property is not capable of an
127 equitable partition and division otherwise than by sale, the court is pleased to order, adjudge, and decree that the clerk and master, after having advertised said property for thirty days, in some paper published in Chattanooga, shall sell the same at public outcry to the highest bidder, for one-fourth cash, the balance in equal instalments of two and four months, taking secured notes and retaining lien on land for purchase money, and in bar of all equities of redemption. The master will report his action to the next term of this court.

Complainant, by his att'y, makes application in open court for an order for an account for rents; but there being no specific prayer for such relief in the bill, the court declines to grant such an order.

It is further ordered and decreed that the defendant, John Geiler, pay all the costs of this cause, for which an execution may issue.

And the defendant, by attorney, comes and prays an appeal from
128 the judgment and decree of the court to the next term of the supreme court, to be held at Knoxville, Tenn., which is granted on giving the proper bond for costs, with good security.

Complainant also prays an appeal from the judgment of the court that only allows and decrees him entitled to recover one-fourth interest of one-half of the property sought to be recovered; and also from the action of the court in refusing to grant an order for an account for rents, which appeal is also granted on his giving bond with security for costs of appeal.

Appeal bond. (*John Geiler's.*)

Appeal bond.

STATE OF TENNESSEE:

Chancery court of Hamilton County.

Know all men by these presents that we, John Geiler and Christian Horman, are held and firmly bound unto R. M. Barton, jr., as-
129 signee, &c., in the sum of two hundred and fifty dollars, to the payment of which well & truly to be made and done, we bind ourselves jointly and severally, our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated the 29th day of June, one thousand eight hundred and seventy-seven.

The condition of the above obligation is such that whereas the said court at its June special term, held on the 4th Monday of June, 1877, in the case of R. M. Barton, jr., assignee, &c., vs. John Geiler, rendered a decree against the said John Geiler, from which decree said Geiler prayed

an appeal to the next term of the supreme court of Tennessee, to be held at Knoxville, on the second Monday in September next, which was granted upon condition that said appellant execute bond as required by law:

Now, if the said appellant shall prosecute said appeal with effect, or in case of failure therein, pay all such costs as said supreme court
130 may adjudge against him, and abide by and perform all other decrees in the premises, then the above obligation to be void, otherwise to be and remain in full force and virtue.

JOHN GEILER, [SEAL.]
By N. H. BURT, *Sol.* [SEAL.]
CHRISTIAN HORMAN. [SEAL.]

Signed, sealed and acknowledged in the presence of—

(Endorsed:) Filed 29th June, 1877. T. M. McConnell, c. & m.

Apperl bond. (*Barton's.*)

Appeal bond.

STATE OF TENNESSEE:

Chancery court of Hamilton County.

Know all men by these presents that we, R. M. Barton, jr., assignee of Kessler and Horman, and Wm. M. Baxter, security, are held and firmly bound unto John Geiler, in the sum of two hundred and fifty dollars, to the payment of which, well and truly to be made and done, we bind ourselves jointly and severally, our heirs, executors and administrators,
131 firmly by these presents. Sealed with our seals and dated the 30th day of June, one thousand eight hundred and seventy-seven.

The condition of the above obligation is such that whereas R. M. Barton, jr., assignee, &c., has prayed an appeal from a decree rendered in the case of R. M. Barton, assignee, vs. John Geiler, to the next term of the supreme court to be held at Knoxville: Now, if the said R. M. Barton shall successfully prosecute said appeal, or otherwise pay all costs that may be adjudged against him, and abide by and perform the orders of said court in the premises, then the above obligation to be void, otherwise to be and remain in full force and virtue.

R. M. BARTON, JR., [SEAL.]
Assignee of Kessler & Horman.
WM. M. BAXTER. [SEAL.]

Signed, sealed & acknowledged in presence of—

(Endorsed:) Filed 30th June, 1877, T. M. McConnell, c. & m.

132 *Rule docket.*

Chancery court of Hamilton County, Tenn.

No.	Sol's.	Parties.
1902	Baxter & Barton ..... Nash H. Burt.....	R. M. Barton, jr., assignee of Kessler & Horman, vs. John Geiler.

1876.
29 Aug. Original bill filed.
29 " Prosecution bond, Wm. M. Baxter, surety, taken & filed.
29th Aug. Copying bill & subp. to answer issued to Hamilton County for deft.
Sept. 1st. Subp. to answer, returned executed by C. B. Champion, sheriff. Or. bill 2,500 words enrolled, book 8, page 4,521.
Sept. 27. Answer of deft. filed, notice given.
Answer of deft., 2,650 w., enrolled, book 5, p. 451.

1877.
2nd Ap'l. Subp. to testify issued to Hamilton County, for Jack
133 Keiler & Thos. Evans & returned executed by N. F. Rogers d. sh'ff.
7 Ap'l. Depositions of R. M. Barton, jr., Tom Evans, & Jacob Kessler, exhibits thereto, taken filed.
7 " Notice to take proof returned. Service acknowledged.
7 " Subp. to testify issued to Hamilton County for Henry Masters and returned executed by N. F. Rogers, d. sh'ff.
11th Ap'l. Depositions of Henry Masters taken & filed.

Ap'l term. Order 4–21.

Continued until next special term, and set for trial on first day thereof.
June 25. Deposition of Chris. Horman filed.
" 25. Deed of trust, Kessler & Horman to P. G. Jones, filed.
" 25. Names of creditors of Kessler & Harmon filed.

June sp'l term.
27 June. Final decree. Compl't decreed entitled to one-fourth of the property described in bill. Order of sale. Both parties granted appeal to Supreme Court.
134 29 June. Appeal bond, am't $250.00, Christian Horman surety, filed by def't.
30 " Appeal bond, am't 250.00, Wm. M. Baxter surety, filed by compl't.

Execution docket.

Chancery court of Hamilton County, Tennessee.

No.	Sol's.	Parties.
	Baxter & Barton	R. M. Barton, jr., assignee of Kessler & Horman, vs. John Geiler.

1876.
Aug. 29. State tax 5 00
J. A. Coldwell, c. & m.:
Filing bill, 25; aff., 25; pros. bond, 25 75
Surety, 25; recording, 25; sup. to ans., 75 ..... 1 25
Copy of bill, 2.50; enrolling bill 5 00
For'd 7 00

	For'd	7 00	
	Filing ans. def't, 25; aff., 25; notice, 25	75	
135	Enrolling answer	2 65	
	Docketing, 30; rules, 20	50	
			10 90
	T. McConnell, c. & m.:		
	Subp. to testify, 3 witnesses	30	
	2 notices to take proof	50	
	Taking & filing 3 depositions	3 00	
	2 exhibits, 50; 25 continuance', 25	75	
	Filing agent, 25; filing dep. of C. Horman	50	
	Filing deed of trust	25	
	Filing names of creditors, 25	25	
	Final decree, 75; docketing, 50	1 25	
	Rule, 30; bill of costs, 50	80	
			7 60
	She'ff fees. C. B. Champion, serving 1 def't		1 00
	" " N. F. Rogers, serving 3 witnessses, 25 ea.		75
	Witness " Tom Evans, one day's attendance		1 00
	" " Henry Masters, one " "		1 00
	June sp'l term, 27' June, 1877. Judg't v. def't for costs		$27 25

Final decree.

	Costs incident to appeal:	
	Entering order of appeal & taking bond (comp'ts')	75
	Security, 25; recording, 25	50
	Entering order of appeal & taking bond (def'ts')	75
	Recording, 25; surety, 25	50
136	Transcript for Sup. Court, 21,500 w	$21 50
	Seal, 50; postage, 5c.; bill of costs, 50	1 05
	Total	$25 05

Certificate.

I, T. M. McConnell, clerk & master of the chancery court of Hamilton County, Tennessee, do hereby certify that the foregoing 132 pages contains a full, true, and correct transcript of all the pleadings, exhibits, proof, records, dockets, &c., in the case of R. M. Barton, jr., assignee, vs. John Geiler, in said court, as the same now appears of record and on file in my office.

Witness my hand & the seal of said court, at office in Chattanooga, this 20' August, 1877.

T. M. McCONNELL, *C. & M.*
By J. T. HILL, *D. C. & M.*

137 PROCEEDINGS IN THE SUPREME COURT.

R. M. BARTON, JR., ASSIGNEE, &C.,
vs.
JOHN GEILER.

On the 29' Aug't, 1876, the compl't, as assignee in bankruptcy of Jacob Kessler and Fred. Horman, filed his bill in the chancery court at Chattanooga against the def't, John Geiler.

The bill alleges that on the petition of creditors of said Kessler & Horman, partners, filed 17' March, 1876, they were regularly declared bankrupts by the U. S. district court at Knoxville, on the 8th day of April, 1876.

It is further alleged that on the 10th Feb'y, 1876, said firm made an assignment of their stock of goods to a trustee for the benefit of their creditors, and on the 18th Jan'y, 1876, Jacob Kessler made a fraudulent conveyance of an interest of one-half in a valuable house & lot
138 in Chattanooga to def't, Geiler; that this conveyance was made with the intent to defraud other creditors, & to defeat the provisions of the bankrupt act, by giving an unauthorized preference to s'd Geiler, who had reason to believe s'd debtor was insolvent & knew that a fraud upon said act was intended.

Def't answered the bill and denied that he had reason to believe s'd Kessler was insolvent or knew that he intended any fraud by the conveyance, &c.

The chancellor decreed that the conveyance was fraudulent, & that said Kessler had a fourth, instead of a half, interest in said house, & directed its sale as prayed for, but refused an account for rents, and from this decree both parties have appealed to this court.

Although the def't took no objection to the jurisdiction of the chancery court, by plea or otherwise, his solicitor suggests that question for consideration and determination of this court, and cites authorities
139 upon which he relies to show that the Federal courts have exclusive jurisdiction to administer the bankrupt law, and to avoid sales or forfeitures under it, and to recover property fraudulently transferred by the bankrupt; and such seems to have been the view taken by the supreme court of Wisconsin in the case of Bromley vs. Goodrich et al., decided in Jan'y, 1876.

The supreme court of Missouri, in the October previous, had on the contrary held that a State court has jurisdiction of an action brought by an assignee to collect a debt due the bankrupt, & he may select his forum for this purpose; and that this right of the assignee to use the State courts as agencies for the collection of the assets of the bankrupt does not affect the jurisdiction of the Federal courts as to the disbursement of the assets when collected.

140 In the case of Claflin vs. Houseman, assignee, 3 Otto, 131, when the assignee brought suit in a State court to recover a sum collected on a judgment by default, by Claflin, with intent to give him a preference, & in fraud of the bankrupt law, the U. S. Supreme Court held that the assignee might bring such a suit in the State courts.

There does not seem to be any sound reason why the agency of the

State courts should not be used in the collection of the assets of the bankrupt for the purpose of aiding the Federal courts in the administration and distribution of the bankrupt's estate. They assume no jurisdiction under the bankrupt act in so doing, but simply exercise their ordinary jurisdiction in suits between parties.

We are of opinion therefore that an assignee in bankruptcy may sue in the State courts to recover the assets of the bankrupt; and that
141 such suit in no way affects or interferes with the jurisdiction of the Federal courts in cases of bankruptcy.

The next question is, do the provisions of the bankrupt act make the conveyance from Kessler to Geiler void?

To make the conveyance void the following facts must concur:

1. The debtor making the transfer must be insolvent.

2. The conveyance must have been made with a view of giving a preference to the creditor.

3. In any event the person receiving the conveyance must, at the time, have reasonable cause to believe the person making the conveyance to be insolvent, and

4. He must also know that such conveyance was in fraud of the provisions of the bankrupt act.

5. The conveyance must have been made within 4 (or in this case
142 of involuntary bankruptcy 2) months before the filing of the petition, by or against the bankrupt.

It sufficiently appears from the record that at the time of the conveyance to Geiler Kessler was insolvent.

But it does not appear that Kessler at that time was aware of the fact of his insolvency otherwise than as the fact being so one may be presumed to be aware of his own condition.

At the time the conveyance was made Jones, who was in the employ of the firm, says that he always understood they were well to do, and always promptly met their debts, and it was at his instance that an inventory was taken of their stock, which showed it was not sufficient to pay their debts, and he then advised they should make an assignment, which was immediately done. This was several weeks after the conveyance to Geiler,
143 and Evans testifies that before the inventory was taken Kessler insisted they had ample means to pay their debts, & he & his partner had some disagreement, which made Horman desirous to sell his interest to Kessler. And Kessler testifies that he never knew he was unable to pay his debts until the evening before the assignment was made, on taking an inventory of their assets, and had not then, nor before nor after, any intention of taking the benefit of the bankrupt act, but made the assignment to pay his creditors as far as his assets would go, and then to pay the rest as he might be able. There is no testimony in the record to contradict these statements.

Geiler is an old German, speaking English very imperfectly, so that it was necessary, in taking his deposition, to employ an interpreter.
144 Beside, he is afflicted with a disease of the spine, is very hard of hearing, and hardly competent to attend to his business. He denies having any reason to believe that Kessler was insolvent, or having any knowledge that Kessler's conveyance to him was in fraud of the bankrupt act. Kessler had for several years—5 or 6 or more—lived in his

family, and acted as his agent in transacting his business; had handled considerable sums of money, and no complaint seems to have been made of his want of fidelity. He, as both Geiler and himself state, had borrowed several sums of money of Geiler, who held his notes, one for $875, and one for $650, and the firm of Kessler and Horman owed him $560. This sum, & about $200 due Chris. Horman, a brother of Fred., & former partner, were proved by them respectively in the bankrupt case.

There is no evidence, aside from the fact of insolvency at the time of the conveyance to Geiler, of an intent to prefer; but at that
145 time Kessler says he believed he was solvent, nor does it appear that others supposed that he was not.

Evans, who wrote the deed and did business for the firm, & Chris. Horman, a partner up to Sep., 1875, supposed them to be solvent; and Evans testifies that they had good credit, & had always paid their notes when due up to the time of the assignment. When the conveyance was made to Geiler, Evans drew the deed, & proves that the two notes of Kessler were surrendered to him, and that Geiler remarked that he would go & get the money to complete the payment; but Kessler remarked to him, "wait awhile, we will go & have the deed recorded," &c.; that he saw no money paid. But Kessler & Geiler both swear it was paid on that day, 18' Jan'y; & Kessler said he paid part of it in a day or two afterwards to Chris. Horman on a note due him, & Chris. Horman proves that Kessler did pay him on 19' or 20' Jan'y, 6 or $700 on a note he held on him.

146 It is true Kessler lived in Geiler's family, & his firm occupied Geiler's storehouse; but it is in evidence that the rent was regularly paid, & there is no evidence that Geiler had reasonable cause to believe Kessler was insolvent when he took the conveyance.

We think the evidence very clearly shows that Geiler paid all of the $14,300 that the lots and improvements cost, except $2,325 that Kessler paid, and that this sum was repaid him in his own notes & in cash by Geiler.

All the testimony was taken by compl't, and unless we arbitrarily reject the testimony of his own witnesses we are unable to concur in the chancellor's conclusion that the sale & conveyance to Gieler was fraudulent in fact, and void under the bankrupt act.

The chancellor's decree will be reversed and the bill dismissed.

DEADERICK,
Chief Justice.

147 And on the 6th day of Nov., 1879, there being present & presiding Chief-Justice James W. Deaderick & Associate Justices P. Turney, Thos. J. Freeman, R. McFarland, & and W. F. Cooper, the following decree in said cause was pronounced and entered upon the minutes, to wit:

R. M. BARTON, JR., ASSIGNEE, &C.,
vs.
JOHN GEILER.

This cause coming on to be heard on this 6th day of Nov., 1879, on the transcript of the record from the chancery court of Hamilton County, & the court being of opinion that there is error in the decree of the chancel-

lor, pronounced in this cause at the June special term of the chancery court of said county, the same is reversed. It is therefore or-
148 dered, adjudged, & decreed by the court that said decree be reversed & the bill dismissed; & that complainant & his security for prosecution, George T. White, pay the costs of the chancery court, & compl't & Wm. M. Baxter, his security for the appeal, pay the costs of this court, for which execution may issue.

Execution docket.

COSTS OF CHANCERY COURT.

State tax	$5 00
Cl'k J. A. Caldwell, filing bill, 25; aff't, 25; pros. bond, 25; surety, 25; recording, 25; sub. to ans., 75; copy of bill, 2.50; enrolling bill, 2,50; filing answer, 25; notice, 25; aff't, 25; enrolling answer, 2.65; 3 docketings, 30; rules, 20.....	10 90
Cl'k T. M. McConnell, 3 subs., 30; taking 3 depositions, 3.00; continuance, 25; 2 notices, 50; final decree, 75; 3 rules, 30; taxing costs, 50.....	5 60
Sh'ff C. B. Champion, serving sub. to ans.....	1 00
" W. F. Rogers, 3 witnesses summoned.....	75
149 Witnesses, Tom Evans & Henry Morton, each 1 day, at at 1.00.....	2 00
	$25 25

Decree, Nov. 6, 1879, vs. compl't & security, Geo. T. White.

COSTS IN SUPREME COURT.

State tax.....	$5 00
Clerk Deaderick, filing record, 75; 21 docketings, 2.10; 2 rules, on docket, 20; decree, 75; entering decree, 15; judgment ag't securities, 25; judgment for costs, 25; dismissal, 25; taxing 2 bills of costs, 1.00.....	5 70
Cl'k McConnell, transcript, 22.50; 2 appeal bonds, 1.50; security to 2 bonds, 50; recording bonds, 50; seal, 50; postage, 5.....	28 55
(36.25)	$36 25

Decree, Nov. 6, 1879, vs. complainant & security, Wm. M. Baxter.

150 COSTS OF APPEAL TO U. S. SUP. COURT.

Clerk Deaderick, transcript, 25,500, 25.50; seal, 50.....	$26 00

STATE OF TENNESSEE:

I, J. F. Deaderick, clerk of the supreme court of said State, at Knoxville, do hereby certify that the foregoing is a full and true copy of the

records and decree pronounced by said court in the cause therein named, at its September term, 1879, as the same appears of record in my office.

Given under my hand and the seal of said court, at office in Knoxville, this 2nd day of December, 1879.

[SEAL.] J. F. DEADERICK, *Clerk.*

151 STATE OF TENNESSEE:

I, James W. Deaderick, chief justice of the supreme court of Tennessee, do hereby certify that *that* J. F. Deaderick, whose signature appears to the foregoing certificate, is, and was at the time of making such certificate, clerk of the supreme court of Tennessee, at Knoxville, & that said certificate is in due form, & that the signature thereto of s'd clerk is in his own proper handwriting.

Given under my hand at Nashville, Tenn., this 4th day of December, 1879.

JAS. W. DEADERICK,
Chief Justice of the Supreme Court of Tennessee.

152 STATE OF TENNESSEE:

I, J. F. Deaderick, clerk of the supreme court of said State, at Knoxville, do hereby certify that James W. Deaderick, whose name is subscribed to the foregoing certificate, is, & was at the date thereof, presiding chief justice of said supreme court, duly elected, commissioned, & sworn; & that the signature of said chief justice to said certificate is genuine.

Given under my hand & the seal of said court, at office, in Knoxville, this 2nd day of February, 1880.

[SEAL.] J. F. DEADERICK, *Clk.*

153 To the Hon. M. R. Wait, Chief Justice of the Supreme Court of the United States of America:

Your petitioner, R. M. Barton, jr., assignee of Kessler & Horman, would respectfully show unto your honor that at the last term of the supreme court of the State of Tennessee, being the September term, 1879, held at Knoxville term, in a case pending before said court, in which your petitioner was complainant and one John Geiler was the defendant, there was drawn in question a construction of the bankrupt act of the United States, and your petitioner sought to enforce a right thereunder and assert a title to the property given by said act, and said court decided the said cause against the right and title set up and claimed under said statute, and committed in said decision a manifest error against petitioner, which said decision petitioner asks may be reviewed by the Supreme Court of the United States, and for that purpose herewith submits a properly-certified transcript of said cause and asks that your honor will award the issuance of a writ of error thereon.

R. M. BARTON, JR.,
Assignee Petitioners.
BAXTER & BARTON,
& BARTON & SON, *Sol's.*

154 The United States of America to John Geiler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Tennessee, wherein R. M. Barton, jr., assignee of Kessler & Harmon, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this 26th day of January, in the year of our Lord one thousand eight hundred and eighty.

N. H. SWAYNE.

JAN'Y 26, 1880.

155 On this thirty-first day of January, in the year of our Lord one thousand eight hundred and eighty, personally appeared L. L. Sample, dept. U. S. marshal, before me, the subscriber, J. H. Ragsdale, a notary public in for Chattanooga, Hamilton County, Tennessee, and makes oath that he delivered a true copy of the within citation to John Geiler.

L. L. SAMPLE,
A. U. S. Marshal.

Sworn to and subscribed the 31st day of January, A. D. 1880.

[SEAL.] J. H. RAGSDALE,
Notary Public.

Notary fee, 50c., paid by R. M. Barton, jr., assignee of K. & H.

Service of citation $2.00; rec'd pay from R. M. Barton, jr., assignee of K. & H.

L. L. SAMPLE,
A. U. S. Marshal.

156 Know all men by these presents that we, R. M. Barton, jr., assignee of Kessler & Harmon, I. N. Lee, & R. M. Barton, sr., are held & bound unto John Geiler in the full & just sum of five hundred dollars, to be paid to the said John Geiler, his certain attorney, executors, administrator, or assigns, to which payment, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly & severally, by these presents. Sealed with our seals & dated this 23rd day of January, in the year of our Lord one thousand eight hundred & eighty.

Whereas lately at a term of the supreme court of the State of Tennessee, in a suit depending in said court between R. M. Barton, jr., assignee of Kessler & Harmon, appellant, & John Geiler, appellee (appeal & cross-appeal), a decree was rendered against the said R. M. Barton, jr., assignee of Kessler & Harmon; and the said R. M. Barton, jr., assignee of Kessler & Harmon, having obtained a writ of error, & filed a copy thereof in the clerk's office of the said court, to reverse the decree in the
157 aforesaid suit, & a citation directed to the said John Geiler, citing

& admonishing him to be & appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

Now, the condition of the above obligation is such that if the said R. M. Barton, jr., assignee of Kessler & Harmon, should prosecute his writ of error to effect, & answer all damages & costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force & virtue.

R. M. BARTON, JR. [SEAL.]
I. N. LEE. [SEAL.]
R. M. BARTON, SR. [SEAL.]

Sealed & delivered in presence of & acknowledged before me—
W. M. BRADFORD,
Chancellor 3rd Chancery Div. Tenn.

Approved by Wm. M. Bradford, judge, chancellor of the third chancery division of Tennessee. I certify that this is a good & sufficient bond.
W. M. BRADFORD,
Chancellor.

158 (Endorsed:) I approve this bond. Jan. 26, 1880.
N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

STATE OF TENNESSEE:

I, J. F. Deaderick, clerk of the supreme court of said State, at Knoxville, do hereby certify that the foregoing is a full and true copy of the bond for writ of error filed in the cause therein named, as the same appears of record in my office.

Given under my hand and seal of said court, at office in Knoxville, this 2nd day of February, 1880.

[SEAL.] J. F. DEADERICK, *Clerk.*

159 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. M. Barton, jr., assignee of Kessler & Harmon, appellant, and John Geiler, appellee, and John Geiler, appellant, and R. M. Barton, jr., assignee of Kessler & Harmon, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor
160 of such their validity; or wherein was drawn in question the

construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said R. M. Barton, jr., assignee of Kessler & Harmon, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and eighty.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

(Indorsement on cover:) No. 188. R. M. Barton, jr., assignee of Kessler & Harmon, plaintiff in error, vs. John Geiler. Tennessee sup. court. Filed 27th February, 1880.

2700——5

OFFICE SUPREME COURT U.S.
FILED
DEC 19 1882
JAMES H. McKENNEY, Clerk.

108-161

BRIEF AND ARGUMENT

—OF—

BARTON & SON AND H. E. JACKSON.

SUPREME COURT OF THE UNITED STATES,

No. 188.

R. M. BARTON, JR., Assignee of Kessler and Horman,
Plaintiff in error.

vs.

JOHN GEILER,

In error to the Supreme Courtof the State of Tennessee.

Democrat, Chattanooga, Tenn.

No. 188.

R. M. Barton, jr., assignee, etc., vs. John Geiler.

Brief of Barton & Son for plaintiff in error.

STATEMENT.

This cause was brought to this court by a writ of error to the Supreme Court of the State of Tennessee to review the decision of that court.

The appellant, the complainant, in a bill filed in the Chancery Court of the Third Chancery Division of Tennessee, was and is the assignee in bankruptcy of Kessler & Horman, of Chattanooga, Tennessee, a firm composed of Jacob Kessler and Fred. Horman. Complainant brought this suit to set aside a conveyance of a house and lots in Chattanooga, Tennessee, made by Jacob Kessler, one of the bankrupts to the respondent, and appellee, John Geiler, alleging in the bill that the conveyance was made in fraud of and contrary to the provisions of the bankrupt act and of the State laws. The Chancery Court decided in favor of complainant and entered a decree for the property sued for. Geiler appealed to the Supreme Court of Tennessee, which reversed the decree of the Chancery Court and dismissed complainant's bill—writ of error from this court.

The simple question in the case is whether the conveyance attacked by the bill of Kessler to John Geiler was in fraud of and contrary to the provisions of the bankrupt act.

The question may be raised, as was done in the Supreme Court of Tennessee, whether an assignee in bankruptcy can maintain a suit in a State court.

The errors assigned by us in the decision of the Supreme Court of the State of Tennessee are as follows:

1. In deciding against complainant's right to the property claimed.
2. In holding that Kessler was not aware of his insolvency at the time of the conveyance.
3. In holding that an actual knowledge of his insolvent condition at the time of the transfer on the part of Kessler was necessary in order to make the conveyance void under the bankrupt act.
4. In holding that "the insolvency", contemplated by the Bankrupt Act, is the inability to finally pay off all debts on a general winding up and realizing on all assets.
5. In holding that the facts proven did not constitute an "intent or view to prefer."

6. In holding that actual insolvency and actual preferment were not sufficient to constitute a view to prefer.

7. In holding in substance that the expectancy, motive and desire to prefer are essential elements of the view "to prefer" within the meaning of the Bankrupt Act.

In holding that any actual belief on the part of Geiler was necessary to complete the fraud on the Bankrupt Act.

9. In holding that the facts proven did not show that Geiler had "reasonable cause to believe" Kessler insolvent.

10. In holding that the complainant who had produced in court the testimony and declaration of the conspiring parties, the bankrupt and preferred creditor, was bound by their declaration of want of knowledge of the insolvency of the absence of intent to prefer and reasonable cause to believe when the independent facts disclosed by them proved the contrary.

11. In holding that Kessler at the time of the conveyance to Geiler had only a one-fourth interest in the land, and none in the improvements or in ignoring this point altogether.

12. In holding that the case presented by the record did not constitute a conveyance made contrary to the provisions of the Bunkrupt Act.

III.

BRIEF OF ARGUMENT.

We submit that all the errors assigned, except one, were committed by the Supreme Court of Tennessee in arriving at their conclusion that the conveyance attacked was not in fraud of the Bankrupt Act, and we believe they can be most easily and briefly exposed and answered by showing that under the principles of construction heretofore announced by this court, the conveyance was in fraud of the Bankrupt Act.

The conveyance was made by Jacob Kessler, a member of the Bankrupt firm to John Geiler.

Under sections, 5,128 and 5,129, Revised Statutes, a conveyance made within two or four months of the filing of the petition in bankruptcy by a person insolvent with a view to give a preference, the vendee or creditor having reasonable cause to believe the debtor insolvent and knowing the fraud, is void.

The conditions all concur in this cause:

1. The conveyance must be within two or four months. It was. The conveyance was made January 18, 1876.—[Transcript, page 6 and 7.] The petition in bankruptcy was filed March 17, 1876.—[Transcript, page 1 and 5.]

2. The vendors must be insolvent or in contemplation of insolvency.

The condition of insolvency exists, as contemplated by the Bankrupt Act, either (1st.) whenever the existing assets are insufficient to pay all the debts, if sold for that purpose.

Toof vs. Martin.—[13 Wallace, page 40. Bump on Bankruptcy, page 812; or, (2nd) whenever there is an inability to meet and pay one's debt at maturity and in the ordinary course of business, Wager vs. Hall, (16 Wall. 602,) Buchanan vs. Smith, (16 Wallace, 277). The assertion by the debtor that he can not meet and pay a debt establishes his insolvency.—17 Wallace, 473.

The fact of insolvency only is required, not the knowledge of it.—15 Wallace, 584.

The facts are, that not only the fact of insolvency, but the knowledge of it clearly appears from the proof.—Transcript, pages 57, (142*), 27, (79), 40, (112), 39, (109, 110), 37, (104), 16, (49), 10, (32).

4TH: THE VIEW TO A PREFERENCE.

The intent to prefer is held to result from the "fact of the giving "one creditor an advantage over another with respect to the payment "of his debt."—Bump on Bankruptcy, 10th edition, p. 817, et seq., and the many authorities therein cited. See also Wager vs. Hall, 16 Wallace, 602.

The intent, the actual preference and the desire and motive to prefer clearly appear in in this cause.—[Transcript, pages 27 (79*), 40 (112), 19 (59) 20; 24 (70), 36: 37, 39, (10), 16. 10, (31, 32), 13, (40).

FIFTH—REQUIREMENT.

Reasonable cause to believe: No knowledge nor even belief is required. The creditor must be considered to have reasonable cause to believe the insolvency, when such a state of facts is brought to his notice as would lead a prudent business man to the conclusion that the debtor cannot meet his obligations as they mature in the ordinary course of business.—Toof vs Martin, 13 Wallace, page 602.

Knowledge of the agent is knowledge of the principal.—Rogers vs. Palmer, 12 Otto page 266.

The facts are: Kessler was the agent for Geiler.—Transcript, pages 7, 8, 21, (62), 24, (72). He knew his insolvent condition.—[Transcript, pages 24, (70), 13, (14).

Geiler also knew himself the insolvent condition of Kessler.[—27, (79), 13, (39 and 40.)

He had the knowledge and reasonable cause required when, according, to his own story he had pressed Kessler for the ~~renewing of a~~ payment note past due more than six months, and Kessler gave as a reason for not paying it that he didn't have the money.—[Transcript, pages 27, (79), 13, (39 and 40.)

2. On eleventh assigment of error. The record shows that Kessler, at the time of this conveyance was the owner of an undivided one-half interest in the property, while they only pretend to account for the sale of a one-foruth interest in the lots, and no interests in the im-

*The figures in parenthesis refer to the side pages of Transcript; the original paging of the Transcript.

provements.—[Transcript, pages 7, (22), 17, (53), 33, (95 and 96), 34, (96 and 97).

The deed being to Kessler and Geiler, and the interest of each being otherwise unexpressed, we submit, that as a matter of law, Kessler was the owner of a half interest, at least as to strangers and creditors, it will be so held, and as to that and the fixtures placed on Kessler's land, Geiler and Kessler are estopped to deny that such is the case as to them.

3. The right of an assignee in Bankruptcy to maintain a suit in a State court has been decided by this Court in the caces of Claflin vs. Houseman.—3 Otto, page 131.

ARGUMENT.

The facts of this cause briefly are, that Kessler & Horman, Jacob Kessler and Fred Horman were in January, 1876, doing business in Chattanooga as retail grocers.—[Transcript, pages 5, 7 and 8.]

On the 18th of January, 1876, Jacob Kessler conveyed to John Geiler his interest in the real estate described in the bill which the assignee seeks to recover.—[Transcript, page 6 and 7.]

Twenty-two days after that, viz: on the 10th February, 1876, Kessler & Horman made an assignment to a trustee for creditors.—[Transcript, page 39.] On the 17th of March, 1876, the petition under which K. & H. were adjudicated, bankrupts was filed.—[Transcript, page 1 and 5.]

The bill attacks the conveyance to Geiler as fraudulent, both under the provisions of the Bankrupt Act and the State and common law.

The outline history of this firm, and the parties connected with this transaction is as follows:

The defendant, John Geiler, and his wife and children and two step-sons named Schweir, Christ, Henry and Fred Horman and Jacob Kessler, all Germans, came to Chattanooga and located in 1874. —[Transcript, pages 22, 6 and 7.]

Christ Horman is the brother of Mrs. Geiler, Fred. and Henry Horman are her nephews, the Schweirs her sons by a former husband. —[Transcript, 22, 6, 7, 43 and 36.]

Jacob Kessler is said not to be related to the family, but he is the intimate friend and the financial and business agent of John Geiler, He (Jacob Kessler) and Mrs. Geiler, as they say, "attended to all Geiler's business, (except, of course, in an emergency like the one in this case, when it became necessary for him to attend to it)—[Transcript, page 24.]

These individuals, it will be seen from the record, this happy German family constitute a close corporation, and work, in and out to their mutual, indivual and collective advantage as occasions require.

In March, 1874, John Geiler and Jacob Kessler purchased the lots

in litigation for $9,300.—[Transcript, pages 22 and 17.] The deed was made to "Geiler and Kessler," the interest of each not otherwise expressed.—[Transcript, page 217. In July, 1874, John Geiler and Jacob Kessler, in their joint names, made a contract with one Henry Masters, a contractor, who put up a $5,000 brick building on the lots for them. —[Transcript, pages 33 and 34.

In November, 1874, Jacob Kessler and Fred. Horman, a nephew of Mrs. Geiler, formed a partnership and went into the retail family grocery business in this new building of Kessler & Geiler.—[Transcript, pages 27 and 19.

On January 11, 1875, Christ Horman, the brother of Mrs. Geiler, became a member of the firm.

On the 6th of September, 1875, Christ Horman withdrew from the firm, because, as he says, "It was not paying."—Transcript, page 35—"The firm then owed some $700," as he says, "and the debts coming to the firm were bad." —Tanscript, page 36.—Christ Horman was an equal partner with the others, and he had paid in a little over $2,000. —Transcript, page 35.—"This was paid back to him before the failure." —Transcript, pages 35 and 37. On the settlement with Christ Horman they agreed to pay him $1,967: $200 of this they paid in cash—notes for the ballance. They overpaid these notes by turning over goods to him to the amount of $1,927.81; all that within sixty days before failure.—Transcript, pages 36, 37 and 38.—In the fall of 1875, shortly before the failure, the firm of Kessler & Horman sold the only real estate the firm held, a lot, to Christ Horman for $275.—Transcript, page 29.

About the same time Jacob Kessler conveyed his interest in one of the lots owned by him and Geiler to Henry Schweir, Mrs. Geiler's step-son, for, as he says, $295.—Transcript, page 29.

About the same time another lot to Fred. Schweir, another step-son, for, as he says, $250.—Transcript, page 29.

At this time the firm owed C. G. Tacham & Co., of Louisville, $408, due February 11, 1875; still due and unpaid.—Transcript, page 40.

On December 4, 1875, the bill of Charles Brown & Co., of Cincinnati, Ohio, for $703.95, became due, was not met, and has never been paid.

On December 27, 1875, the bill of Baking Powder Company, of New York, fell due, and was never paid.—Transcript, page 40.

On January 8, ——, bill of Elesas May & Co., of Atlanta, fell due, and was not paid.—Transcript, page 40.

On January 12, 1875, the bill of Darby & Co., of Baltimore, fell due and was not paid —Transcript, page 40.

On January 18, 1875, Jacob Kessler conveys his entire interest in their joint property to John Geiler, as he says, for $2,325; $800 of which he says Geiler paid him in cash—the balance by the cancellation of a

note of his for $875, due in May, 1875, and one note for $650, due in July, 1876.—Transcript, page 26, 29 (84).

Other bills of the firm fell due in January and February, 1875. —Transcript, page 40-45.

On February 4, 1876, Fred. Horman and Jacob Kessler join in a deed conveying a lot that Jake had owned to Henry Horman.—Transcript, page 43-45.

Then Fred. Horman and Jacob Kessler were without any real estate.

Other bills were falling due.

They then concluded, as they say, to take soundings. "In taking stock, it was ascertained that there was not as much on hand as they thought they had: so after two days, realizing their condition, their investigation for the first time obscuring the sunlight of prosperity, Horman determined upon an assignment." [Answer of defendant, Transcript p. 8.] Then expressing therein their desire "to let all on hand go to pay debts, our obbject being to equalize our assets for the creditors an assignment was made of a stock of goods worth about $1,200.00, to pay over $5,000.00 to general creditors. [Transcript p. 16, 39.] And Jacob Kessler and Fred Horman were left paupers, with nothing but their characters."

But Jacob remainded in Geiler's house; still lived and boarded with him, and run the same business—a little grocery store—on a smaller scale, in the same house, but in Geiler's name, and he still takes care of Geiler's money.—[Trans. p. 25.

The petition in Bankruptcy was filed March 17, 1876, within two months after conveyance by Geiler to Kessler.

We submit that the facts disclosed by this record constitute a fraud on the creditors of Kessler & Horman, not only under the Bankrupt Act, but under the common law and State statutes.

Under the Bankrupt act:

The conveyance having been made within two months before the filing of the petition in bankruptcy, and there being no question as to the actual insolvency of Kessler at the time of the conveyance—there only remains the question of whether there was a "view to prefer" and whether Geiler had reasonable cause to believe Kessler insolvent at that time—on these questions the Supreme Court of Tennessee decided against the complainant, involving in their conclusions an erroneous construction of the Bankrupt act as well as of the weight of the facts.

That court said "There was no evidence aside from the fact of the insolvency of an intent to prefer; but at that time Kessler says he believed he was solvent." Transcript, p. 52.

This conclusion is based on the assumption that "the view to prefer" includes a motive, expectancy desire and intent based on a knowledge of such an insolvent condition that if all the Bankrupt's as-

sets were converted into cash he could not pay off all his liabilities."

The actual insolvency of the parties at the time appears, and that Jacob Kessler knew he could not pay out, notwithstanding he says he did not, we think clearly appears from the record as shown in the history of the firm, heretofore referred to.

From the time Chris. Horman went out of the firm, in September, 1875, there is clearly an intention manifested and carried out by Kessler and Horman to divest themselves of all their property and transfer it to their relatives and friends. It is done; there is too much of it for accident, a consistent plan, a motive and design are evident.

But the insolvency contemplated by the Bankrupt Act exists when there is an inability to meet one's debts at maturity and in the ordinary course of business. Bump. on Bankruptcy, 40th Ed., p. 813, et seq., and authorities there cited; Toof vs. Martin, 13 Wallace, 40; Wager vs. Hall, 16 Wallace, 602; Buchanan vs. Smith, 16 Wallace, 227; Wilson vs. City Bank, ~~Wallace, 17~~ Wallace, 473.

Kessler says the reason he sold out to Geiler was because he owed Geiler. Geiler was pressing him, and he could not meet the notes. Geiler was mad at him, and threatened him with the Chancery Court. Transcript 24, 27, 13.

This was insolvency, of which he was aware.

He knew his firm owed Tacham & Co. $408.00, due in February, 1875, which they had not met in due course or business. He knew a bill of $703.00 had fallen due on the 4th of December preceding, to Charles Brown & Co., of Cincinnati. He knew of other bills past due on that day, January 18, 1875, which they had not met in the ordinary course of business. Transcript, p. 40.]

He knew, that instead of meeting the notes given to Chris. Horman in the ordinary course of business, they had transfered to him within sixty days two-thirds of their stock, they being retail, and not wholesale, grocers. Transcript, ps. 35, 36, 37, 38.

He knew he had a note in bank which he could not meet in the ordinary course of business. Transcript, p. 10.]

Now, even if Kessler was as ignorant of his condition as he pretends to have been, here is insolvency enough within any reasonable definition of the word to answer the purposes of the act.

Being in an insolvent condition, and having this much knowledge, he transfers $7,000 of real estate, at least, to one creditor, and leaves the rest unpaid.

The "view to prefer" follows as a legal consequence from these facts: Toof vs. Martin, 13 Wallace, 40; Wager vs. Hall, 16 Wallace, 602; Buchanan vs. Smith, 16 Wallace, 227.

Then did Geiler, the vendee, have reasonable cause to believe Kessler insolvent?

This question is also answered by the foregoing facts and authorities.

It is also settled by the fact that principal is bound by the acts of the agent, and is chargable with all his knowledge and information. —Rogers vs. Palmer, 12 otto. 266.

Kessler was Geiler's agent, attended to all his business for him, kept Geiler's money in his own name.—[Transcript, pages 7 and 8.] He and Mrs. Geiler managed all Geiler's business. He says:—[Transcript, page 24 (72). "I, all the time, talked with Mrs. Geiler about his business, and told her all matters within my knowledge affecting his business."

Kessler knew the condition of things, and made the transfer to keep the property out of the reach of his creditors, and if Geiler's was a bona fide debt he is chargable with Kessler's knowledge and the conveyance is void.

This question is also clearly settled under another decision, above cited, that the fact that a debtor could not meet his obligations, as they mature in the ordinary course of business, is sufficient notice to put any one to an inquiry, and is a reasonable cause to believe him insolvent.—Wager vs. Hall, 16 Wallace, 602; Buchanan vs. Smith, 16 Wallac, 277.

This trade was made January 18, 1876. One of the notes paid had been due since May, 1875, nearly a year; the other was not due until August, 1876, yet Geiler was pressing payment; was mad because Kessler wouldn't pay; was threatening Kessler with the Chancery Court, and Kessler says, "I made the trade because I couldn't pay the notes." These facts not only show the sufficient legal notice, but the fact of Geiler's pressing the payment of a note not due for six months to come shows his knowledge of their condition and his uneasiness in the contemplation thereof.

In this little picture the parties have drawn showing their good faith, the entire absence of any intimation or idea of the coming crash, an absolute want of any view to prefer, a real determination not to have made the trade if they had known the failing condition--they have, as usual, over done the matter. Some strokes have been to heavy, and the picture is a cartoon. The idea of that trusting old man, who is ignorant of his affairs, who has Kessler attend to all his business—[Trans. 11-12]--whose money Kessler kept in bank in his own name; who looked to Kessler and his wife for everything and "all that he does is looking after a small garden, in which he spends "all his time"—Trans. p. 12., the idea of this harmless old idiot as painted by them, all at once without any idea or intimation of Kessler's failing condition, concluding to make Kessler, his trustee and friend, pay the two notes, one due and the other not due for six

months, getting very mad at Kessler; threatening him with the Chancery Court if he didn't settle, wanting to settle, as he tells the lawyer who cross-examines him, to get some money to build with.—[Transp. 19.]—meeting Kessler and his business man in a room, very much excited, and accepting Kessler's offer of settlement at once [Trans. p. 13], taking the land and paying $800 and the notes, etc., then relapsing into his old idiocy and indifference, letting Kessler take care of his money, keep it in his name, collect it and pay it out! Ah, at what a fortunate period did this lucid interval occur!

Unpremeditated and quite a coincidence.

It is presumed that if this court grants relief at all it will go into the whole case as well as decide the question as to whether the transfer was made in contravention of the Bankrupt Act. With that view, we desire to call the attention of the court to the following matters as showing what interest the Bankrupt Kessler had in the property sought to be recovered, as well as the general character of the whole transaction

The conveyance from Kessler to Geiler purports to convey the entire interest of Kessler in the property, but the defendant only accounts for or pretends to have paid for a one-fourth interest in the lots. The bill alleges that Kessler was the owner of a one-half interest in the entire property, lots and improvements. This the defendant denies; says he only had a one-fourth interest in the lots and none in the property, and so both Geiler and Kessler swear. This part of the case the Supreme Court of Tennessee entirely ignored in their opinion. The deed for the property was made to Kessler & Geiler without specifying their interests, just as if each were half owner. It is true they now produce what they pretend was a written agreement, entered into between them at the time, showing their interests, but this (Transcript, pages 9 and 10) was never proven, registered nor witnessed by any one, and at least can have no effect as to strangers.—[Code of Tennessee, section 2,005.

The contractor who built the $5,000 house on the place says the contract was with Kessler and Geiler; that Kessler made the "contract for the firm;" that he supposed they had both equal shares in the building transaction; that Jacob Kessler always paid him; that Kessler worked on the building; that Kessler's labor and superintendence would be reasonably worth $300; that Kessler superintended and had control of all things about the building.—[Transcript, pages 33 and 34. And yet Geiler and Kessler tell us Kessler received no pay for his work; had no interest in the buildings and improvements, and only a one-fourth interest in the lot which Geiler forced him to sell and convey back to him.

We submit to the court that the facts in this record clearly show that, as a matter of fact, Kessler was the owner of an undivided one-half interest in this property.

But in addition to that we submit that, even if that were not sufficiently established so far as the creditors are concerned such must be held to be the fact.

The deed was made to Geiler and Kessler and their heirs. This, under the common law, would make them joint tenants, and each would have an equal interest in the property. And, while the act of 1784, chapter 22, Section 6 (Section 2010, Code of Tennessee), in our State abolishes the survivorship incident of joint tenancies, it does not abolish the rule of construction that applied to such deeds and regulated the interest and share conveyed to each.

But construed as a tenancy in common, the presumption of law arises from such a deed that the interests and shares of the co-tenants were equal.—[Freeman on Co-tenancy, p. 163, sec. 105; Jarritt vs. Johnson, p. 39 st. 369; Shields vs. Stark, 14 Geo. 429.] and we submit that, as to the creditors of Kessler, the parties are estopped to deny it.

On the same principles we submit that even if Kessler had not paid for one-half of the improvements, and did not, in equity as between himself and Geiler, own one-half the improvements, they having been erected on his land, of which he is held out to the world as half owner, he and Geiler are now estopped to deny it.

And we most confidently submit that the erection of this house, a brick store, a permanent improvement and fixture on the land, in which Kessler owned at least a one-fourth interest by operation of law vested him with a like interest in that improvement, and as Geiler only claims to have purchased a one-fourth interest in the lots, complainant is clearly entitled to recover this interest in the fixtures and improvements.

And we submit that if this court hold the conveyance to Geiler void as contrary to the provisions of the Bankrupt act, the decree should be for a half interest in this entire property.

We submit that in this cause, under section 3730, Revised Statutes, which provides that when the conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be prima facie evidence of fraud, the burden of proof, and the duty of showing entire good faith in this matter was on defendant.

Every detail of this transaction was out of the ordinary course of the debtor's business.

We would further call the attention of the court to the fact that although the defendant, in his answer, says that there were witnesses who saw the money, the $800.00 paid by him to Kessler pass, they were never produced. Tom Evans, who wrote the deed, says that

after the trade was made, Geiler proposed to go and get the money, but did not; that he was with Geiler and Kessler until after the deed was acknowledged and delivered, and left for registration, and that the money was not paid. Transcript, p. 13, 14.

In the light of all of the foregoing, we ask the court to look on the following mathematical demonstrations, based on the doings of this harmonious family.

The first sum is one of division of the proceeds among the members of this close corporation. Within four months before assignments.

Kessler & Horman convey to Christ. Horman 1 lot valued at (Transcript 29, p. 2.,)	$ 375 00
Same time, Jacob Kessler conveys to Stepson, Henry Schweir one lot, value (Transcript p. 29)	295 00
Same time to step-son, F. Schweir, one lot, within 60 days before assignment, (Transcript p. 29) value	250 00
Kessler & Horman transfer to uncle, Christ. Horman goods to value	1,972 81
To same pay cash	200 00
To same uncle Christ., Jacob Kessler pays within 20 days of assigment cash	800 00
To brother, Henry Horman, they transfer 6 days before assignment, one lot valued at	300 00
To father, John Geiler, Jacob Kessler pays within 22 days of assigment, by conveyance of property	7,500 00
Making	$11,692 00

divided among the family and subtracted from the visible resources of Kessler & Horman, as partners and as individuals, and added to those members of the family who were not liable for the firm's debts.

In connection with the foregoing it might be well to look at the following example of discounting the future.

It will be remembered that Kessler pretends an ignorance of insolvency and did not apprehend a failure until the day before the assignment. Yet Chris Horman, who had been a member of the firm, on 6th of September, 1875, goes out, "because it don't pay him to stay in." "It was not paying him." The sequal justified his judgment Unforseen and another coincidence.

They give him their note for $1,762 78.

On December 1, 1875, he gets in goods	$743 36
On December 14 and 20, he gets in goods	236 78
On January 5, 1876, in goods	164 05
On January 28, 1876, 12 days before assignment	652 34
In February, 5 days before assignment	196 28
Total in goods, transcript, p. 37.	$1972 81

Does this disposal of two-thirds of stock within sixty or seventy days before failure by one retail grocery firm to another indicate any knowledge of their condition and a disposition to cover or not.

We desire to submit one other problem of loss and gain taking the figures furnished us by these parties.

Put in firm of Kessler & Harmon at commencement, November, 1874, by Kessler.—[Trans. p 27]	$ 800 00
Like amount by Fred. Harmon	800 00
Borrowed from Geiler by Kessler and put in firm, p. 28	650 00
Like amount by Fred. Harmon, p. 27	650 00
Borrowed by firm from Geiler for business.—[Tans. p. 28	560 00
Borrowed by firm from Henry Harmon, p. 43, 45	1,150 00
Total	$4,610 00

This also corresponds with Chris. Harmon's statement that he put ~~with him~~ something over $2,000 as his equal third.

To above capital of firm	$4,610 00
Add indebtedness to creditors on failures over	5,000 00
Total	$9,610 00
Deduct assets left	$1,000 00
And we have net loss	$8,610 00

They had only about $300 in notes and accounts then due them. They had not speculated. Only a part of their books were turned over to the assignee, and from them he could not solve the mystery. Jacob Kessler, the manager and head center was asked (Trans. 28, 80) how he accounted for this loss. His answer was he couldn't account for it at all, and had nothing to show where all this money had gone.

When we refer to the other family division problem we can gather some idea of where it had gone. The creditors may truthfully say, "What was our loss was their gain."

And the uncomfortable feature in this matter for a creditor to contemplate is that in September, 1875, according to Chis. Homan, p. 36, the firm only owed $700. Four months after this they fail, and owe $5,000, and have about $1,000 to pay with.

This thing of, within the short space of four months, geting so much property into their hands, and getting it out again so soon, and yet having nothing left to represent it, has an element of financial juggling in it that is unpleasant for a creditor to contemplate.

Yet, after having all this money and property pass through his hands, honest (?) Jacob Kessler remains a poor man; nothing left, not even the $500 realized from the sale of lots; he has to board with Mr. Geiler, who charges him nothing, and runs a little grocery store for the old man and the same store where he had run the big one for

himself; and takes care of old man Geiler's money, instead of taking care of his own.

Sad are the reverses of fortune! There is only one explanation to this whole affair. Jacob has been too honest. In depositing and keeping old man Geiler's money in his name, Jacob in his over zealous care for Geiler got his accounts mixed and left some $7,000 or $8,000 to the credit of Geiler that he should have himself.

Will this court allow this? Grant (such is clearly not the case; but we say for the argument granting) that Geiler from ignorance and inability knew nothing of the fraud, but that the whole thing was managed by Kessler without his knowledge. Will this court permit that to cloak and cover this fraud? Will they allow old man Geiler to meet the creditors of Kessler with the statement that Kessler may have put his money in my box; may have put his land in my name; yet, as I didn't know of the fraud at the time you can't get it, although I may have gotten from him five times as much as I ever let him have. Will this court allow Kessler who came before the business world as a joint and equal partner in a firm with a professed capital of about $5,000.00, as the half owner of a tract of land, and improvements worth $16,000.00, the improvements being made under a contract in his own name, and that of the other half owner, and for which he himself paid, and with this firm credit of $5,000, and an individual credit based on $8,000.00 worth of real estate, obtain $5,000.00 worth of goods, then, with the rapidity of magic, change all this wealth from his Kessler individual pocket to his Geiler agency pocket, and keep it there, even if he were (trying to do the best for Geiler he knew how"

Robbers, except highwaymen in Missouri, where the conditions seem to be peculiarly favorable for so doing, do not, as a rule, admit their guilt; but surely a plainer case of fraud and business robbery was never drawn from guilty conspirators than this record presents.

BARTON & SON and H. E. JACKSON,
For Appellants in Error.